

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**ROBERT I. HANFLING, CHAPTER 7
TRUSTEE FOR ATG, INC. AND ATG
CATALYTICS L.L.C.,**

Plaintiffs,

vs.

**EPSTEIN BECKER & GREEN, P.C.,
et al.,**

Defendants.

C.A. No. 05-10077-RGS

August 7, 2006

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
MOTION OF DEFENDANT EPSTEIN BECKER & GREEN, P.C.
TO STRIKE DEPOSITION TESTIMONY OF ALAN BRAUNSTEIN**

The Plaintiffs, Robert I. Hanfling, Chapter 7 Trustee for ATG, Inc. and ATG Catalytics, LLC (jointly, the "Plaintiffs"), by their attorneys, Jacobs Partners LLC, hereby submit this Memorandum in Opposition to the Motion of Defendant Epstein Becker & Green, P.C. (alternatively the "Defendant" or "EBG") to strike the deposition testimony of Alan Braunstein (the "Motion"). In support of their opposition to Defendant's Motion, the Plaintiffs respectfully represent as follows:

1. On April 10, 2006, Defendant EBG took the deposition of Alan L. Braunstein, an attorney with the firm Riemer & Braunstein, LLP, which has offices in Boston, Massachusetts. It is undisputed that Mr. Braunstein serves as counsel to Stephen S. Gray (the "MMT Trustee"), Chapter 11 Trustee for, *inter alia*, Molten Metal Technology, Inc. ("MMT"). MMT's jointly administered bankruptcy cases are currently pending in the United States Bankruptcy Court for the District of Massachusetts, Eastern Division.

2. EBG's motion for summary judgment is currently pending before the Court. Among the issues of fact in dispute in this case is whether there existed an attorney-client relationship between MMT and EBG during 1997 and 1998. EBG denies that there was attorney-client relationship between MMT and EBG, while Plaintiffs believe there was.

3. During Attorney Braunstein's deposition, EBG's counsel inquired of Attorney Braunstein whether he believed there was an attorney-client relationship between MMT and EBG. After Attorney Braunstein testified that he believed there was an attorney-client relationship between MMT and EBG, EBG's counsel asked him to testify about the facts upon which he based his belief. Attorney Braunstein then testified, at length, as to the basis for his belief that there was an attorney-client relationship between ATG and MMT.¹

4. EBG now seeks to strike all of the portions of Attorney Braunstein's testimony referred to by Plaintiffs in opposing EBG's pending Motion for Summary Judgment, on the grounds that the testimony is not independently admissible in evidence. *See* Motion, page 2, ¶4. EBG further asserts that Attorney Braunstein's testimony consists variously of hearsay statements, unsupported conclusions and speculative assertions. *See* Motion, page 3.

5. However, insofar as Attorney Braunstein's testimony constitutes admissible non-expert opinion testimony based, predominantly, upon admissible evidence, there is no basis to strike the deposition testimony.

Attorney Braunstein's Testimony Would Be Admissible at Trial.

6. Pursuant to Rule 701 of the Federal Rules of Evidence, Attorney Braunstein's testimony regarding his view that there was an attorney client relationship between MMT and EBG will be allowed at trial, provided that: (a) it is rationally based on his perception, (b) helpful to the determination of the fact in issue, and (c) not based on scientific, technical, or other

¹ Attached hereto as Exhibit A is a complete true and accurate copy of the transcript from Attorney Braunstein's deposition (hereinafter the "Braunstein Tr.").

specialized knowledge within the scope of Rule 702 of the Federal Rules of Evidence. *See* Fed. R. Evid. 701.

7. Attorney Braunstein's testimony regarding the existence of an attorney-client relationship between MMT and EBG was rationally based upon facts perceived by him. He explained fully the basis for his belief. He testified that his belief is based upon, among other things, his review of MMT business records. *See* Braunstein Tr., pp. 38 to end.

8. EBG asserts that Attorney Braunstein's testimony consists of "hearsay" statements. However, most of the facts upon which Attorney Braunstein based his belief are derived from records of MMT, including invoices/bills issued by EBG to MMT for payment, and records evidencing payment by MMT of EBG bills. *See* Braunstein Tr., p. 38, 52; 46-47. In addition, Attorney Braunstein based his conclusion on records related to the MMT bankruptcy case, including the Proof of Claim filed by EBG in MMT's bankruptcy case (see Braunstein Tr., p. 38), and an application to employ EBG as special counsel to MMT that was drafted but never filed with the Bankruptcy Court in MMT's bankruptcy case (*see* Braunstein Tr. pp. 39-40). Copies of many of the records reviewed and relied upon by Attorney Braunstein were produced to all parties in this action. Furthermore, copies of many of these records have been submitted to the Court by both parties in connection with the Pending Summary Judgment.

9. Insofar as the records relied upon by Attorney Braunstein are business records of MMT, those records would satisfy the "business records" exception to the rule against hearsay. *See* Fed. R. Evid. 803(6). Furthermore, with respect to the bills submitted by EBG to MMT, and the Proof of Claim, those documents constitute admissions, excluded from the rule against hearsay. *See* Fed. R. Evid. 801(d)(2)(A).

10. As to EBG's contention that Attorney Braunstein's testimony contains "unsupported conclusions and speculative assertions," that contention is without merit and is itself

unsupported. Attorney Braunstein explained the bases for his determination that there was an attorney-client relationship between EBG and MMT. The fact that EBG does not agree with Attorney Braunstein's conclusion does not mean that the conclusion is unsupported or speculative.

11. Furthermore, the Court should consider that the MMT Trustee, whom Attorney Braunstein represents, is, by operation of the United States Bankruptcy Code, the person vested with the right to invoke, enforce, or waive any attorney-client relationship between MMT and its attorneys. Thus, it was well within Attorney Braunstein's professional purview to examine the facts and assess whether there was such a relationship between EBG and MMT.

12. The fact that statements by attorney Daniel Cohn were a factor in Attorney Braunstein's determination that there was an attorney-client relationship between EBG and MMT does not warrant exclusion of Attorney Braunstein's deposition testimony. Again, Attorney Braunstein made it clear that Attorney Cohn's statements were not the sole basis for his determination. *See Braunstein Tr.*, p.50

13. While EBG will be free to challenge the weight of Attorney Braunstein's testimony, there are simply no grounds for complete exclusion of his testimony at this stage of the proceeding.

WHEREFORE, for the following reasons, the Plaintiffs respectfully request that the Court deny Defendants' Motion in its entirety.

REQUEST FOR ORAL ARGUMENT

The Plaintiffs believe that oral argument may assist the Court and wish to be heard.

Dated: Norwalk, Connecticut
August 7, 2006

THE PLAINTIFFS,
By their attorneys,
JACOBS PARTNERS LLC

By: /s/ Robert M. Fleischer

Mark R. Jacobs
Leslie L. Lane
Robert M. Fleischer
Merritt View
383 Main Avenue
Norwalk, Connecticut 06851
Phone: (203) 846-6622
Fax: (203) 846-6621

- and-

McCARTER & ENGISH, LLPP
William A. Zucker
David Himmelfarb
225 Franklin Street
Boston, MA 02110
(617) 345-7000

Certification of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on this 7th day of August, 2006.

By: /s/ Robert M. Fleischer
Robert M. Fleischer

ALAN L. BRAUNSTEIN
4-10-06

Page 1

Volume: I
Pages: 1-103
Exhibits: 1-7

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ATG, INC., ET AL,
Debtors
Case Nos.
01-46389 N11
02-43161 N11
02-43163 N11
02-43164 N11

* * * * *

ROBERT I. HANFLING, CHAPTER 11
TRUSTEE FOR ATG, INC. and ATG
CATALYTICS LLC,
Plaintiffs

vs.

Adv. Pro. No.
03-04806

EPSTEIN, BECKER & GREEN, P.C.,
JOHN PRESTON, CHRISTOPHER
NAGEL, EUGENE BERMAN, ETHAN
JACKS, QUANTUM CATALYTIC LLC,
ABC CORPS 1 THROUGH 5 and JOHN
DOES 1 THROUGH 5,
Defendants

DEPOSITION of ALAN L. BRAUNSTEIN, a
witness called by and on behalf of the Defendant
Epstein, Becker & Green, P.C., taken pursuant to the
Federal Rules of Civil Procedure, before Heidi B.
Stutz, Certified Shorthand Reporter No. 146599S and
Notary Public in and for the Commonwealth of
Massachusetts, at the offices of Riemer &
Braunstein, LLP, 3 Center Plaza, Boston,
Massachusetts, on Monday, April 10, 2006, commencing
at 11:02 a.m.

ALAN L. BRAUNSTEIN
4-10-06

<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 ROBERT M. FLEISCHER, ESQ. Morgenstern Jacobs & Blue, LLC 383 Main Avenue Norwalk, Connecticut 06851 203-846-6622 Rfleischer@mjbllc.com on behalf of the Plaintiffs</p> <p>6 PAULA M. BAGGER, ESQ. Cooke, Clancy & Gruenthal, LLP 265 Franklin Street Boston, Massachusetts 02110 617-428-6800 Pbagger@ccg-law.com on behalf of the Defendant Epstein, Becker & Green, P.C.</p> <p>10 PETER H. SUTTON, ESQ. Rierner & Braunstein, LLP 3 Center Plaza Boston, Massachusetts 02108 617-880-3400 on behalf of the Deponent</p>	<p>Page 4</p> <p>1 PROCEEDINGS</p> <p>2 Whereupon:</p> <p>3 ALAN L. BRAUNSTEIN,</p> <p>4 having been satisfactorily identified and duly sworn</p> <p>5 by the Notary Public, was examined and testified as</p> <p>6 follows:</p> <p>7 DIRECT EXAMINATION</p> <p>8 BY MS. BAGGER:</p> <p>9 Q. Good morning, Mr. Braunstein.</p> <p>10 A. Good morning.</p> <p>11 Q. Thank you for being here. My name is</p> <p>12 Paula Bagger and I represent Epstein, Becker &</p> <p>13 Green, P.C. which is a defendant in the action</p> <p>14 Robert I. Hanfling versus Epstein, Becker & Green,</p> <p>15 et al, Civil Action Number 05-10077, pending in</p> <p>16 United States District Court.</p> <p>17 Could you state your full name for</p> <p>18 the record, please?</p> <p>19 A. Alan Louis Braunstein.</p> <p>20 Q. And you are currently counsel to the</p> <p>21 Chapter 11 Trustee of the Molten Metal Technologies</p> <p>22 bankruptcy?</p> <p>23 A. Technically not. I was counsel. Plan was</p> <p>24 confirmed, so now I'm counsel to the plan</p>
<p>Page 3</p> <p>1 INDEX</p> <p>2 WITNESS: DIRECT CROSS REDIRECT RECROSS</p> <p>3</p> <p>4 ALAN L. BRAUNSTEIN 4 93</p> <p>5</p> <p>6 EXHIBITS: DESCRIPTION PAGE</p> <p>7 1 Fax dated 9/25/98 14</p> <p>8 2 Confidential Agreement 15</p> <p>9 3 Initial Proposal 21</p> <p>10 4 Motion to Approve Settlement Agreement 34</p> <p>11</p> <p>12 5 Internal Memo dated 12/6/97 45</p> <p>13</p> <p>14 6 Letter dated 11/10/97 56</p> <p>15</p> <p>16 7 Plaintiffs' Supplemental</p> <p>17 Answers to Defendant Nagel's</p> <p>18 First Set of Interrogatories 76</p> <p>19</p> <p>20 ***ALL EXHIBITS KEPT BY ATTORNEY BAGGER***</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 5</p> <p>1 administrator.</p> <p>2 Q. And what date was the plan confirmation?</p> <p>3 A. I believe it was February 13th of this</p> <p>4 year, 2006.</p> <p>5 Q. And is Stephen Gray the plan</p> <p>6 administrator?</p> <p>7 A. He is.</p> <p>8 Q. And was Stephen Gray the Chapter 11</p> <p>9 Trustee?</p> <p>10 A. He was.</p> <p>11 Q. Do you remember the month and year of your</p> <p>12 appointment as Chapter 11 Trustee?</p> <p>13 MR. SUTTON: Objection. He's not</p> <p>14 the Trustee.</p> <p>15 Q. I'm sorry, as counsel to the Chapter 11</p> <p>16 Trustee.</p> <p>17 A. August, 1998.</p> <p>18 Q. And do you recall approximately the date</p> <p>19 of Mr. Gray's appointment as Chapter 11 Trustee?</p> <p>20 A. The way it works is that what happened is</p> <p>21 the Court enters the order appointing the Trustee.</p> <p>22 Then the U.S. Trustee makes his choice or her</p> <p>23 choice. Actually, it was his choice at that time,</p> <p>24 Chris Marshall was the Trustee. And then the</p>

2 (Pages 2 to 5)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 6</p> <p>1 Trustee files a document with the court. So it's a 2 process that sometimes is a week to ten days. So 3 the actual date would be the Trustee was appointed 4 on this date, Steve Gray was appointed as Trustee by 5 the U.S. Trustee, and then the court affirmed that 6 appointment. That I believe took place over the 7 last week in August of 1998. I don't remember the 8 exact date. The date that we've been using for 9 purposes of our pleadings are on or about August 10 24thth.</p> <p>11 Q. And how much, how long a period of time 12 elapsed between Mr. Gray's appointment becoming 13 final and you being appointed counsel to Mr. Gray, 14 approximately?</p> <p>15 A. Again, because of the way it works with 16 regard to bankruptcy, Mr. Gray called us, and 17 ostensibly with our local rules we were asked to be 18 counsel to the Trustee subject to a pleading, 19 subject to the approval of the court. Again, those 20 are three separate days. When you're asked, your 21 employment becomes nunc pro tunc without further 22 order of the court once you apply your application. 23 And when the order enters, it then dates all the way 24 back. All this was a period of I believe late</p>	<p style="text-align: right;">Page 8</p> <p>1 became the Trustee?</p> <p>2 A. The Blackstone Group, as with all 3 debtor-in-possession professionals, ends upon the 4 appointment of a Trustee. The Trustee did not 5 ratify any of those appointments.</p> <p>6 Q. Did the recovery group assume some of the 7 work that Blackstone Group had been doing during the 8 debtor-in-possession period?</p> <p>9 A. No, not to my knowledge.</p> <p>10 Q. Once the Trustee period started what steps 11 did the Trustee take to get the message out to the 12 marketplace about the assets of Molten Metal 13 Technology?</p> <p>14 A. I don't know specifically what steps the 15 Trustee took.</p> <p>16 Q. Do you have a general sense of how Mr. 17 Gray handled that, handled that work?</p> <p>18 A. I do.</p> <p>19 Q. And could you describe that?</p> <p>20 A. There was already a set number of people 21 who were interested in these various businesses. 22 The committee had already explored the avenues of 23 the residual market such as liquidators and the 24 Trustee would have, presumably did make it known</p>
<p style="text-align: right;">Page 7</p> <p>1 August to mid-September of 1998.</p> <p>2 Q. At the point that you started acting as 3 counsel to Mr. Gray what was the status of efforts 4 to sell assets of Molten Metal Technology?</p> <p>5 A. The Trustee was soliciting offers and in 6 doing so consulted with the debtor's counsel and the 7 creditors' committee, as well as I believe the 8 Blackstone Group. There were number of parties that 9 were involved during the, what we call the debtor in 10 possession period before the appointment of a 11 Trustee. And during that time period the parties 12 had solicited various offers for some of the assets 13 of the debtor. I don't know specifically, but that 14 was the posture that things were in. Blackstone was 15 hired for that purpose. The creditors' committee on 16 its own, we were informed, were looking at the ways 17 to sell Bay City to a liquidator, those sort of 18 things. So the Trustee investigated those avenues 19 that had been explored previously by the predecessor 20 professionals in the case and then set out on what 21 he thought was the most appropriate course going 22 forward.</p> <p>23 Q. Did the Blackstone Group's appointment end 24 when you became the -- excuse me, when Mr. Gray</p>	<p style="text-align: right;">Page 9</p> <p>1 through whatever channels that a Trustee makes known 2 that these assets were available for sale as a going 3 concern or if avenues had already been exhausted, as 4 it was with Bay City, then as a liquidation.</p> <p>5 Q. If I used the term "wet waste assets" of 6 Molten Metal Technology, would that have a meaning 7 for you?</p> <p>8 A. Yes, it would.</p> <p>9 Q. Okay. And at the point at which Mr. Gray 10 became involved and you became involved do you 11 remember what firms had evinced an interest in the 12 wet waste assets of Molten Metal Technology?</p> <p>13 A. Yes. NUKEM Technology, I believe it's 14 NUKEM in capitals, N-U-K-E-M, Framotome, I believe 15 that's spelled F-R-A-M-O-T-O-M-E, and ATG. There 16 may have been others. Those are the only three that 17 I was aware of as to the wet waste assets.</p> <p>18 Q. And if I used the term "CEP assets" of 19 Molten Metal Technology, would that phrase have a 20 meaning for you?</p> <p>21 A. Yes, it would.</p> <p>22 Q. If I used the term "Q-CEP assets" of 23 Molten Metal Technology, would that have a meaning? 24 A. Yes, it would.</p>

3 (Pages 6 to 9)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 10</p> <p>1 Q. And in the sense that Molten Metal 2 Technology during the Trustee period used it, were 3 Q-CEP and CEP referring to different sets of assets 4 or the same? 5 A. Well, just the CEP is a process and there 6 was a CEP process that may have been utilized in 7 connection with Bay City because that was what was 8 envisioned, although Bay City never operated. So 9 when we referred to Q-CEP we talked about the 10 operations in Oak Ridge, Tennessee and the, I 11 wouldn't say operations, but the administrative 12 aspect of it in Fall River, Massachusetts. 13 Q. And if I were talking about the Bear Creek 14 Road facility in Oak Ridge, Tennessee, would it be 15 most appropriate to refer to that as one of the 16 Q-CEP assets? 17 A. Yes. 18 Q. At the point in time that Mr. Gray took 19 over the position as Trustee and you became his 20 counsel who, if anyone, had shown interest in the 21 Q-CEP assets of Molten Metal Technology? 22 A. John Preston, Christopher Nagel, and what 23 they would do is we would have several meetings with 24 parties that presumably they had solicited. In</p>	<p style="text-align: right;">Page 12</p> <p>1 There was no -- 2 Q. But they weren't interested in the wet 3 waste assets -- 4 A. To my knowledge -- 5 Q. -- this was all on the Q-CEP? 6 A. To my knowledge, I was believe it was only 7 on the Q-CEP. 8 Q. I will try and be shorter and if you will 9 try and slow down a little, the court reporter is 10 having trouble. 11 (Discussion off the record.) 12 Q. How did you become aware that ATG was 13 interested in purchasing the wet waste assets of 14 Molten Metal Technology? 15 A. I became aware only with ATG sometime, I 16 believe, in the middle of November, 1998. 17 Q. What happened in the middle of November of 18 1998 that caused you to become aware? 19 A. At that time Framotome had advanced an 20 offer for wet waste, but it had been the Trustee's 21 position that he wanted to have a wet waste and 22 Q-CEP sale together because he did not want to be 23 left with the shutdown costs in connection with the 24 Q-CEP operations.</p>
<p style="text-align: right;">Page 11</p> <p>1 other words, I would come to a meeting and Mr. 2 Preston and/or Mr. Nagel would be there along with 3 this investor. The only one I remember definitely 4 meeting with -- there were more than one -- was 5 Clean Harbors, only because I'm familiar with the 6 name. So we met with Preston and the Clean Harbors 7 people together. 8 Q. Okay. And do I understand you to say that 9 the purpose of that meeting was a suggestion that 10 Preston, Nagel and Clean Harbors might together -- 11 A. That's correct. Yes, that's how and with 12 the preceding meeting. I believe Clean Harbors was 13 the last meeting that we had. And we had at least 14 one, if not two other meetings that preceded that. 15 Q. And did you, did you attend the meeting 16 with Clean Harbors -- 17 A. I did. 18 Q. -- Preston and Nagel? 19 A. I did. 20 Q. And was Clean Harbors interested in 21 perhaps, or at least in investigating acquiring the 22 Q-CEP assets together with Preston and Nagel? 23 A. They were there to meet, didn't go to that 24 level as -- they were there to get information.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. And so the question is how you 2 became aware of ATG at that time? 3 A. What happened is that ability -- let me -- 4 what happened is Mr. Preston and Mr. Nagel had kept 5 telling the Trustee that this had value and that 6 there would be someone that would be able to be 7 interested in this process and trying to convince 8 the Trustee of its value. And the Trustee wanting, 9 because of the attendant potential liabilities with 10 shutdown, wanted to see if he could combine a wet 11 waste Q-CEP sale together with the CEP buyer, 12 obviously to absorb the environmental and not have 13 to have the estate be burdened with shutdown costs. 14 And ATG came forward with Preston and Nagel. In 15 other words, I am not aware outside of a letter from 16 ATG interested in the wet waste at some point in 17 time of dealing with, personally with ATG until such 18 time as ATG, Preston, Nagel were all one. And this 19 was after we had submitted the offer the purchase 20 wet waste by Framotome. But in that offer to 21 purchase there was a right of the Trustee to 22 withdraw that offer if he got an offer for both 23 combined. 24 Q. So --</p>

4 (Pages 10 to 13)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 14</p> <p>1 MS. BAGGER: Actually, Peter, do you 2 have the document that I sent out? 3 MR. SUTTON: I think that's it. I 4 left it on your -- 5 MS. BAGGER: I'm sorry. 6 Q. Let me put in front of you, Mr. 7 Braunstein, a document that I guess we'll mark as 8 Exhibit 1 in this deposition. 9 (Deposition Exhibit No. 1 10 marked for identification.) 11 Q. Showing you what has been marked as 12 Exhibit 1 in this deposition, have you ever seen 13 that document before? 14 (Document handed to the witness.) 15 A. I may have, but it's unlikely that I did 16 in September of 1998. 17 Q. Is there anyone from, on the cover page of 18 the fax, is there anyone from Riemer & Braunstein 19 listed on the cover page? 20 A. Dan Black. 21 Q. And who's Dan Black? 22 A. Dan Black was at that time a junior 23 partner who was working on the Molten Metal case. 24 MR. SUTTON: He's no longer with the</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. And do you recognize the document? 2 A. I recognize the document. I don't know if 3 I've ever seen the document before. 4 Q. Do you recognize the form of document, 5 let's ask it that way? 6 A. Yes, I recognize the form of document. 7 Q. And what is it? 8 A. It's a confidentiality agreement. 9 Q. Does it appear to have been sent out in 10 connection with the negotiation of sale of assets in 11 the Molten Metal bankruptcy? 12 A. Well, again, typically as these arise in 13 every bankruptcy, before one can get information 14 regarding an asset for sale that may have 15 proprietary information, a confidentiality agreement 16 is almost always required to be signed. 17 Q. Okay. Would you have any way of 18 estimating how many such agreements the Trustee 19 would have sent out in connection with the sale of 20 assets? 21 A. None. 22 Q. You have no way -- it's a very bad 23 question -- not no confidentiality agreements. 24 A. I'm unaware of who it went to or how many</p>
<p style="text-align: right;">Page 15</p> <p>1 firm. 2 Q. Do you know where Mr. Black is now? 3 A. He's now at Mintz, Levin. 4 Q. When you said it was unlikely that you saw 5 it, is there a reason just generally in terms of 6 your work why it would be unlikely? 7 A. Sure. At that time period where I was 8 becoming involved only when it became a party that 9 was ready to really sit down and meet with us and 10 talk with us in a ready to go forward, and I was 11 working on other matters in connection with that. 12 And Mr. Black was working on basically farming out 13 any presumably confidentiality agreements or 14 anything in connection with soliciting bids on 15 behalf of Mr. Gray. 16 MS. BAGGER: Mark that as Exhibit 2, 17 if we can. 18 (Deposition Exhibit No. 2 19 marked for identification.) 20 Q. I'm going to show you what's been marked 21 as Exhibit 2 in this deposition. 22 (Document handed to the witness.) 23 Q. Can you identify that document? 24 A. It says "Confidentiality Agreement."</p>	<p style="text-align: right;">Page 17</p> <p>1 were sent out. 2 Q. Okay. Do you have any way of estimating 3 how many entities would have submitted an initial 4 offer for the purchase of MMT assets? 5 A. My understanding is -- 6 MR. SUTTON: Wait a second. That's 7 a very broad question. You're asking him all of 8 MMT's assets? 9 MS. BAGGER: At this point, yes. 10 A. My answer -- again, why don't you go over 11 the question again, repeat the question? 12 MS. BAGGER: Could you read the 13 question back? 14 (The previous question was read 15 back by the reporter.) 16 A. Answer, no. 17 Q. Do you have any way of estimating how many 18 would have submitted an initial offer for the wet 19 waste assets of MMT? 20 A. No, except the ones that Stephen would 21 have had me meet with. 22 Q. And who were the entities or potential 23 purchasers of wet waste assets that Mr. Gray had you 24 meet with?</p>

5 (Pages 14 to 17)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 18</p> <p>1 A. Initially it was just Framotome.</p> <p>2 Q. And what was the, do you remember the</p> <p>3 general time period of that?</p> <p>4 A. Yeah. I believe that was in October. It</p> <p>5 was the only party that had submitted an offer that</p> <p>6 was acceptable to the Trustee. So I believe that</p> <p>7 was late October, early November.</p> <p>8 Q. After October were there any others that</p> <p>9 Mr. Gray had you meet with, any other potential</p> <p>10 acquirers of the wet waste?</p> <p>11 A. Right, after we -- again, after October,</p> <p>12 it was after we had served notice of Framotome, yes,</p> <p>13 it was NUKEM and ATG and Quantum. What I'm going to</p> <p>14 say, Preston and Nagel. In other words, it was ATG</p> <p>15 with Preston and Nagel and we were, basically it was</p> <p>16 named Quantum, I believe, Quantum Catalytics.</p> <p>17 Additionally with NUKEM, the negotiations were with</p> <p>18 NUKEM and an entity called Duratech.</p> <p>19 Q. Okay.</p> <p>20 A. So even though we had talked with NUKEM</p> <p>21 individually, again, the Trustee wanted to sell both</p> <p>22 and NUKEM partnered with Duratech.</p> <p>23 Q. So just to make sure I understand, after</p> <p>24 the Framotome offer, there was a joint offer of</p>	<p style="text-align: right;">Page 20</p> <p>1 about the first meeting?</p> <p>2 Q. Yes.</p> <p>3 A. The first meeting was here in this office.</p> <p>4 But I do remember Rick Mikels is really the only</p> <p>5 one, because he's the only one I was dealing with at</p> <p>6 the time. The others were peripheral to me.</p> <p>7 Q. Rick Mikels is an attorney at Mintz Levin?</p> <p>8 A. At Mintz Levin, that's correct.</p> <p>9 Q. Who did he represent in this meeting?</p> <p>10 A. He was representing the purchaser that</p> <p>11 turned out to be really Quantum. I don't know -- by</p> <p>12 the way, there may have been other attorneys there,</p> <p>13 but...</p> <p>14 Q. When you say "representing the purchaser,"</p> <p>15 the purchaser of what?</p> <p>16 A. Well, again, what we were doing at that</p> <p>17 time was negotiating a combined deal as a</p> <p>18 counteroffer to Framotome. And the document which</p> <p>19 was the form of the counterproposal, if you will,</p> <p>20 was what was filed with the court. So again, I'm</p> <p>21 not specifically familiar with what went on</p> <p>22 specifically there. I know it went until 3:00 a.m.</p> <p>23 and I really don't have much of a memory in terms of</p> <p>24 what went on because it started in the afternoon and</p>
<p style="text-align: right;">Page 19</p> <p>1 NUKEM and Duratech and a joint offer of ATG and</p> <p>2 Quantum Catalytic?</p> <p>3 A. Yes. I think what happened was NUKEM made</p> <p>4 its offer, Trustee said I got this Framotome, you</p> <p>5 really want to get it, I'm selling the Q-CEP with</p> <p>6 it.</p> <p>7 Q. Based on the fact that you don't believe</p> <p>8 you saw Exhibit 1 in the September time period, can</p> <p>9 you infer that that offer was found unacceptable?</p> <p>10 A. I can make that, yes.</p> <p>11 Q. When you met with ATG -- did you say that</p> <p>12 was in November?</p> <p>13 A. In November, yes.</p> <p>14 Q. When you met with ATG in November with</p> <p>15 whom did you meet?</p> <p>16 A. I met with Rick Mikels.</p> <p>17 Q. Anyone else?</p> <p>18 A. And other parties that I had not met for</p> <p>19 the first time.</p> <p>20 Q. Do you know who any of the others were?</p> <p>21 A. Some of the parties that were in the room</p> <p>22 at the time I believe was either John Preston or</p> <p>23 Chris Nagel or both, I believe there were one or two</p> <p>24 representatives from ATG -- again, you're talking</p>	<p style="text-align: right;">Page 21</p> <p>1 we ended up with a document that was submitted to</p> <p>2 the court and then later had to be revised. But</p> <p>3 again, I remember the meeting, but I remember</p> <p>4 focusing primarily with Mr. Mikels and there were a</p> <p>5 lot of other people there. Again, I really just</p> <p>6 don't remember who was there because there were a</p> <p>7 series of other meetings up until the court hearing</p> <p>8 and people were, again, coming in and out. I do</p> <p>9 remember people who ultimately, if you asked me who</p> <p>10 was at one of the three meetings, I can identify</p> <p>11 those names, but I don't know who was at each</p> <p>12 specific meeting because meetings went from place to</p> <p>13 place.</p> <p>14 Q. Okay. And just focusing for the moment on</p> <p>15 this first meeting --</p> <p>16 A. Yes.</p> <p>17 MS. BAGGER: Mark this as Exhibit 3.</p> <p>18 (Deposition Exhibit No. 3</p> <p>19 marked for identification.)</p> <p>20 Q. You have in front of you a lengthy</p> <p>21 document that has been marked as Exhibit 3 in this</p> <p>22 deposition. Can you identify that document?</p> <p>23 A. I can.</p> <p>24 Q. Can you tell me what it is?</p>

6 (Pages 18 to 21)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 22</p> <p>1 A. I believe it was the initial proposal that 2 was negotiated either before, during or after that 3 meeting I referred to in November where, again, the 4 only one I specifically remember being there was 5 Rick Mikels. 6 Q. And I guess you, I think you previewed my 7 next question. Do you know whether this was the 8 product of that meeting? 9 A. It's honestly difficult for me to say 10 because I think there were three iditerations. 11 Because we had that meeting, then we went into 12 court, the court then had us meet, I believe it was 13 immediately thereafter. I remember two dates, 14 November 6 and November 13th, and I don't remember 15 which one precipitated the court saying come back 16 the next day and revise this because it's not in the 17 acceptable form with the local rules and a host of 18 other things. Then we went through a series of -- 19 again, these were like marathon meetings going from 20 place to place. So I believe this is the first of 21 the documents that were negotiated -- submitted and 22 I don't know if it, again, preceded the meeting or 23 was after the meeting. I know it went through two, 24 perhaps three iditerations.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. -- held between that first meeting and up 2 to when the court entered the sale order, do you 3 recall meeting with any identifiable individuals 4 representing ATG? 5 A. Again, I can tell you the individuals. I 6 can't say whether they were representing in a legal 7 capacity with ATG. I can tell you the people who 8 were there that I perceived -- 9 Q. Attending on behalf of. 10 A. -- were on behalf of. Whether they -- in 11 what capacity, I just don't know. 12 Q. Okay. 13 A. But there was Kevin Walsh at one of the 14 meetings from Mintz. 15 Q. Are you giving me a list of people who 16 were there on behalf of ATG or just who were there 17 at all? 18 A. Who were there and not on behalf of the 19 Trustee. 20 Q. Okay. 21 A. And not on behalf of any other party but 22 the bidder. Ethan Jacks, Christopher Nagel, Eugene 23 Berman, John Preston, Bill Hewitt. 24 Q. Hewitt?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. If I were to represent to you that the 2 deadline for counteroffers to the Framotome offer 3 was November 6th, 1998, would that help you place 4 this meeting or this document? 5 A. It may or may not, only because, again, I 6 don't know if this was submitted before of them -- 7 if I saw our name somewhere on this, it would make 8 it much easier for it. I don't know if they just 9 submitted this and then they met with us right after 10 to negotiate what ultimately became the offer or 11 whether this was a product of our negotiation at the 12 11th hour to submit this together in a form that 13 would be acceptable to the Trustee. 14 Q. I take it from your previous answer that 15 you don't recall what individuals, if any, were at 16 that first meeting on behalf of ATG, is that 17 correct? 18 A. There were a number of people there. The 19 only one I remember was Rick Mikels and Dan Black, 20 my partner at the time. Those are the only two 21 people I can tell you were definitely at that 22 meeting. 23 Q. If you aggregate the meetings -- 24 A. Sure.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Hewitt. I believe it's H-E-W-I-T-T. He I 2 knew definitely was affiliated with ATG. The others 3 I gave you were former Molten officers, and Nagel 4 was both an officer and director. Excuse me, 5 Preston was only a director, not an officer. And 6 there were, I believe, Frank Chin. He was an Asian 7 American person on behalf of ATG. And I'm quite 8 certain there was another woman, I believe his 9 spouse, but I'm not, that I'm not certain. But -- 10 MR. FLEISCHER: May I interject for 11 just a moment? Could the name you are thinking of 12 actually be Chiu? 13 THE WITNESS: Yes, I would stand to 14 be corrected, Frank Chiu. 15 MR. FLEISCHER: And the other person 16 would have been Doreen Chiu? 17 THE WITNESS: Wouldn't know her 18 first name, wouldn't know her last name, but I was 19 told that they were husband and wife. 20 Q. Okay. Anyone else? 21 A. Yes. Again, throughout the negotiation 22 process, I don't know when, but at one point I was 23 introduced to Jarvis Kellogg. 24 Q. Okay. I'm just going to recap the list</p>

7 (Pages 22 to 25)

ALAN L. BRAUNSTEIN

4-10-06

Page 26

1 and then ask you if there's anyone else.

2 A. Rick Mikels, obviously.

3 Q. The list as I have it includes Rick
4 Mikels, Kevin Walsh, Ethan Jacks, Christopher Nagel,
5 Eugene Berman, John Preston, Bill Hewitt, Frank
6 Chiu, his wife, and Jarvis Kellogg.

7 A. Yes.

8 Q. Are there any other names that --

9 A. From the beginning of, from November
10 through the end of the sale process those were the
11 people who were there. And I believe, again,
12 because someone was referring to Mr. Chiu's wife, I
13 believe he was there and may have been at the
14 hearing. Again, I don't know who was where when. I
15 do know in some locations who was where, for
16 example, at Mintz, Levin.

17 Q. Okay. Did you ever, do you remember
18 whether you ever talked to Jarvis Kellogg outside of
19 large meetings of the acquiring group? Did you have
20 reason to have telephone communications or other
21 meetings with Mr. Kellogg?

22 A. No, I don't believe so.

23 Q. Do you know whether you had any reason to
24 have one-on-one communications with Mr. Hewitt?

Page 27

1 A. I'm quite certain I did not have.

2 Q. And same question for either Mr. or Mrs.
3 Chiu?

4 A. No, I don't believe I spoke directly with
5 any of them.

6 Q. Okay. Is it your practice to take pencil
7 notes of meetings of this sort?

8 A. Well, normally if you have one or other
9 attorneys that are with you, one of the attorneys
10 does. So it's a practice if I'm the only attorney
11 that's in the room, that I would take notes or,
12 again, work on a document, if you will. Because
13 most of this was document sensitive. So I would
14 just write there. But generally someone would be
15 doing that is generally our firm's policy.

16 Q. And do you know who took notes of any of
17 these meetings that you have been testifying to
18 during this November period?

19 A. I don't know who would have taken notes.

20 Q. Okay. Should there be notes in Rierner &
21 Braunstein's closed files of any of these meetings?

22 A. I don't believe so.

23 Q. And why would that be?

24 A. Because at that time certainly I was not

Page 28

1 taking notes. Mr. Black was there and may have.

2 But again, we were working on a document. So it
3 would have been drafts of the document that we were
4 working on in connection with the sale.

5 Q. You said that ATG and Quantum Catalytic
6 originally came to your attention as a joint bidder
7 or a potential joint acquirer of the wet waste and
8 Q-CEP assets, is that correct?

9 A. That's correct.

10 Q. Do you remember the general outline of the
11 initial offer that they came in with?

12 A. I believe -- and again, it would be
13 reflected in here -- but the general offer was a
14 purchase of wet waste and Q-CEP and also included in
15 that were other assets located at the M4 mixed waste
16 facility, because that housed a number of the assets
17 that were used in both operations.

18 Q. Is the M4 center sometimes referred to as
19 the tech center in documents?

20 A. That's correct.

21 Q. Do you recall how in the initial offer to
22 purchase the wet waste assets and the Q-CEP assets
23 were allocated between Quantum Catalytics and ATG?

24 A. I do not.

Page 29

1 Q. Was there real estate involved?

2 A. There was.

3 Q. Can you describe to me the real estate
4 that was involved in the transaction?

5 A. The real estate was in Oak Ridge where the
6 Q-CEP operations were. Q-CEP owned the real estate
7 that was sold in connection with the sale.

8 Q. That's the Bear Creek Road?

9 A. Bear Creek facility.

10 Q. Was there also Barnwell, South Carolina
11 real estate?

12 A. There was Barnwell, South Carolina, a plot
13 of land where the ingots were buried.

14 Q. Do you recall whether there were any
15 particular issues that arose with respect to the
16 issue of the acquisition of the assets?

17 A. There were issues with regard to the sale
18 process and also with respect to the closing and
19 post-closing. So I can go through a litany of what
20 those issues were.

21 Q. What issues arose during the negotiation
22 process?

23 A. The negotiation process was simply, again,
24 the negotiation between the parties and the

8 (Pages 26 to 29)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 30</p> <p>1 particular issues relating to what we call the 2 financial assurance. 3 Q. When you say "between the parties," do you 4 mean between the Trustee and the joint bidder? 5 A. Well, the Trustee and the joint bidder and 6 the necessity to ensure that we, the Trustee, able 7 to get the cash value of what we call the letter of 8 credit on these bonds that were posted for financial 9 assurance and it was in compliance with what the 10 state of Tennessee wanted with regard to any 11 acquirer. So we had to make sure that the acquirer 12 was one that would be able to post the financial 13 assurance with the Trustee and we would negotiate, 14 again, part of the negotiation process for also the 15 cash collateral behind the letter of credit coming 16 back into the estate. And there were just general 17 issues in connection with that because of the 18 necessity to show the Trustee that it had the 19 wherewithal to convince the state of Tennessee that 20 it could get that financial assurance. 21 Q. Any other issues that come to mind as 22 major issues in the negotiation of the -- 23 A. Just -- no major issues that I'm aware of. 24 Just the negotiation, which was a major negotiation</p>	<p style="text-align: right;">Page 32</p> <p>1 A. There was an agreement reached, at least 2 from our side, our side, where we collateralized the 3 differential amount they couldn't come up with at 4 the closing with the accounts receivable. So when 5 the receivables would be collected, that would go 6 and reduce that balance. That's in addition to the 7 installment obligations. And were there also 8 various escrows established. 9 Q. Were there any objections from third 10 parties that had to be addressed prior to the entry 11 of the bankruptcy sale? 12 A. To my knowledge, no, because we involved 13 the State of Tennessee Attorney General's office in 14 the process, invited them to attend and, further, 15 invited them to meet with each of the two bidders. 16 At that time it was just NUKEM, Duratech and ATG/ 17 Quantum. So we engaged them in the process since 18 they were the ones that had to really essentially 19 approve it since it was a regulated business. 20 Q. And did the State of Tennessee make any 21 demands with respect to the structure of the deal? 22 A. Only with regard to the financial 23 assurance and that the companies that would be 24 purchasing it were able to meet the regulation</p>
<p style="text-align: right;">Page 31</p> <p>1 process, if you will. 2 Q. You said that there were issues that arose 3 with respect to the closing? Are those different 4 ones that come to mind? 5 A. That's correct. 6 Q. Could you describe those for me? 7 A. In general terms, because I didn't attend 8 the closing, the entire closing, I think it was a 9 two-day process, and there was a problem with -- 10 again, this is what I remember -- Quantum coming up 11 with the money to purchase what it was going to do, 12 because I believe there was some sort of agreement 13 between Quantum and ATG. All I know is that when it 14 came time to the closing, we had problems in 15 connection with how we were going to close this 16 because there wasn't enough money to close. And 17 there were means in which to effectuate that 18 resolution that were implemented with the Trustee 19 and with the lender. They were all resolved. 20 Q. What generally were the means that were 21 implemented? 22 A. I'm sorry? 23 Q. What generally were the means that were 24 implemented?</p>	<p style="text-align: right;">Page 33</p> <p>1 demands regarding the material. In other words, be 2 able to access what we call nuclear guards, security 3 guards, those kinds of things. 4 Q. And to your knowledge, did that, did those 5 concerns on behalf of the State of Tennessee affect 6 the manner in which the transaction was structured? 7 A. The manner in which any transaction would 8 be structured. 9 Q. In which this one, the ATG/Quantum one was 10 structured. 11 A. Yes. The reason why I was doing the 12 answer, they also with regard to NUKEM, they each 13 met with each one to become satisfied. 14 Q. And do you recall -- well, with respect to 15 NUKEM/Duratech, do you recall whether anything 16 needed to be changed in that deal or what needed to 17 be done to that bid in order to satisfy the State of 18 Tennessee? 19 A. I don't specifically know since I wasn't 20 the one doing the satisfying. I knew that they 21 ultimately met with each party and became satisfied 22 with whatever arrangements they particularly made. 23 Q. Okay. Same question, if I asked you that 24 question with respect to ATG/Quantum, you also</p>

9 (Pages 30 to 33)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 34</p> <p>1 wouldn't have any personal knowledge as to what was 2 done?</p> <p>3 A. I wouldn't have personal knowledge, except 4 that there was a resolution.</p> <p>5 Q. Would Mr. Black have knowledge of that, do 6 you know?</p> <p>7 A. No. It was, again, it was just 8 satisfying, each entity was satisfying the State of 9 Tennessee on its own.</p> <p>10 Q. And the Trustee was happy as long as the 11 State of Tennessee was happy?</p> <p>12 A. That's correct, yes.</p> <p>13 Q. Essentially in terms of --</p> <p>14 A. Essentially, yes. We essentially 15 predicated a sale that, with Tennessee in the 16 courtroom, that they would be okay with.</p> <p>17 MS. BAGGER: Ask you to mark that. 18 (Deposition Exhibit No. 4 19 marked for identification.)</p> <p>20 Q. I'm going to show you what's been marked 21 as Exhibit 4.</p> <p>22 (Document handed to witness.)</p> <p>23 A. Thank you.</p> <p>24 Q. Do you recognize Exhibit 4?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Want to --</p> <p>2 A. I think it would be on the settlement 3 agreement itself.</p> <p>4 Q. And did someone else in the office most 5 likely prepare the motion to allow?</p> <p>6 A. I prepared the motion, but I believe what 7 we do is, again, we get the settlement agreement, we 8 prepare the motion and circulate it. I don't know 9 if we got comments on that or solicited comments on 10 that beforehand, but yes as to the settlement 11 agreement, most definitely.</p> <p>12 Q. Understood.</p> <p>13 I'd like to call your attention to 14 paragraph 10.</p> <p>15 MR. FLEISCHER: Are you referring to 16 the --</p> <p>17 Q. Paragraph 10 of the settlement agreement, 18 I'm sorry.</p> <p>19 MS. BAGGER: Thank you.</p> <p>20 Q. Has Mr. Gray provided any express written 21 waivers of any attorney/client privileges since the 22 entry of this agreement?</p> <p>23 A. I don't know.</p> <p>24 Q. In any event, he hasn't asked you to work</p>
<p style="text-align: right;">Page 35</p> <p>1 A. I do.</p> <p>2 Q. Can you tell me what it is?</p> <p>3 A. It's the motion and attached to the motion 4 is the stipulation of settlement between the Trustee 5 of Molten Metals and the Trustee of ATG, meaning the 6 Trustee in bankruptcy.</p> <p>7 Q. And this was submitted to the bankruptcy 8 court and it was allowed?</p> <p>9 A. That's correct.</p> <p>10 Q. And was a similar document submitted to 11 the bankruptcy court in the Northern District of 12 California, do you know?</p> <p>13 MR. FLEISCHER: Why don't I just 14 respond to that since I'm counsel representing the 15 Trustee? The answer to the question is yes, because 16 I submitted it to, as counsel to Robert Hanfling. 17 The court approved that document. It's a matter of 18 public record.</p> <p>19 Q. And were you involved in the negotiation 20 of this document?</p> <p>21 A. I was.</p> <p>22 Q. And did you work with Mr. Fleischer on 23 this document?</p> <p>24 A. I did.</p>	<p style="text-align: right;">Page 37</p> <p>1 with him on any such thing?</p> <p>2 A. That he would have been asking Mr. Sutton 3 regarding those matters.</p> <p>4 Q. What facts cause you to believe that there 5 is an attorney/client privilege or there was an 6 attorney/client privilege between MMT and EBG?</p> <p>7 A. I'm not understanding the question.</p> <p>8 Q. This is a document that you negotiated 9 with counsel for Mr. Hanfling, correct?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And in this document Mr. Gray is agreeing 12 to waive attorney/client privilege as necessary and 13 appropriate, including, but not limited to, the 14 attorney/client privilege between MMT and EBG. 15 Correct?</p> <p>16 A. Yeah. Are you asking me what case --</p> <p>17 Q. My question to you is what causes you to 18 believe that there existed an attorney/client 19 relationship and/or privilege between MMT and EBG?</p> <p>20 A. If your question is here as it's written 21 in the sentence, I don't think it says definitively 22 there is or is not an attorney/client privilege, and 23 I'm just confused in terms of if you're talking 24 about in law what right does a trustee have to waive</p>

10 (Pages 34 to 37)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 38</p> <p>1 an attorney/client privilege.</p> <p>2 Q. I'm asking a very different question. Do</p> <p>3 you believe that there was, do you have any reason</p> <p>4 to believe that there was an attorney/client</p> <p>5 relationship at any time between Molten Metal</p> <p>6 Technology and Epstein, Becker & Green?</p> <p>7 A. I do believe there was.</p> <p>8 Q. And what facts cause you to believe that?</p> <p>9 A. One, Epstein Becker filed a proof of claim</p> <p>10 in the bankruptcy case.</p> <p>11 MR. SUTTON: Which bankruptcy case?</p> <p>12 THE WITNESS: In the bankruptcy case</p> <p>13 of Molten Metals. I presume when I use "bankruptcy</p> <p>14 case" in the future it will mean the Molten Metal</p> <p>15 case.</p> <p>16 Q. And that was a proof of claim for</p> <p>17 attorneys' fees?</p> <p>18 A. That's correct.</p> <p>19 Q. Is there anything else that causes you to</p> <p>20 believe there was an attorney/client relationship?</p> <p>21 A. Yes. Epstein Becker bills were sent to</p> <p>22 Ethan Jacks. I believe they said "work product" on</p> <p>23 it and the bills weren't redacted.</p> <p>24 MR. SUTTON: Excuse me. You said</p>	<p style="text-align: right;">Page 40</p> <p>1 about, from Mr. Cohn, I believe this was in the year</p> <p>2 2000, what happened with regard to that. And he</p> <p>3 informed me that Epstein Becker -- it was not filed</p> <p>4 with the court and I asked him why. And he informed</p> <p>5 me that Epstein Becker would not go forward unless</p> <p>6 their -- would not waive, would not go forward and</p> <p>7 waive its claim in the bankruptcy case.</p> <p>8 Q. Would not go forward to do what, did he</p> <p>9 say?</p> <p>10 A. Would not represent the debtor as special</p> <p>11 counsel or represent interests of the debtor as its</p> <p>12 special counsel, I believe representing certain</p> <p>13 individuals.</p> <p>14 Q. So you remember that they were</p> <p>15 representing -- I guess what is your memory of what</p> <p>16 the draft --</p> <p>17 A. Well, the conversation --</p> <p>18 Q. No, no. Let me finish the question.</p> <p>19 What is your memory of what, first</p> <p>20 of all, of what the draft application to employ</p> <p>21 indicated that Epstein Becker was going to do?</p> <p>22 A. I don't remember.</p> <p>23 Q. Okay. What is your memory about who --</p> <p>24 this is Dan Cohn?</p>
<p style="text-align: right;">Page 39</p> <p>1 you believe they said "work product"?</p> <p>2 A. Or privilege, or something, that buzz word</p> <p>3 that led me to make that observation that there was</p> <p>4 some attorney/client privilege that existed between</p> <p>5 the two.</p> <p>6 Q. Do you have a recollection sitting here</p> <p>7 today what they said?</p> <p>8 A. On the cover letter or what they may have</p> <p>9 said --</p> <p>10 Q. Well, you said work product --</p> <p>11 A. Confidential, privileged, work product.</p> <p>12 Again, I don't remember exactly the buzz word. But</p> <p>13 when I looked at it I said it's not -- if I were</p> <p>14 representing the company, that's the kind of bill</p> <p>15 that I would send to the company or to the company's</p> <p>16 general counsel or to the assistant general counsel,</p> <p>17 Gene Berman. So I mean the bills and the cover</p> <p>18 letters themselves, as well.</p> <p>19 Q. Anything else that you rely upon for the</p> <p>20 conclusion?</p> <p>21 A. Yes. Specifically I had a meeting with</p> <p>22 Dan Cohn after I reviewed some records at his</p> <p>23 office, including a draft application to employ</p> <p>24 Epstein Becker as special counsel. And I inquired</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Dan Cohn.</p> <p>2 Q. -- who Dan Cohn said that Epstein Becker</p> <p>3 was refusing to continue to represent unless their</p> <p>4 proof of claim was met?</p> <p>5 A. Well, it came up as a question regarding</p> <p>6 why Bingham -- because there was also one regarding</p> <p>7 Bingham, and Bingham, they said they were employing</p> <p>8 Epstein because Bingham refused or would not go</p> <p>9 forward on the same grounds, it would not waive its</p> <p>10 claim.</p> <p>11 Q. Mr. Cohn --</p> <p>12 A. Was counsel to the debtor.</p> <p>13 Q. Let me ask you a question.</p> <p>14 It's your recollection that Mr. Cohn</p> <p>15 said that they were going to retain Epstein, Becker</p> <p>16 & Green to replace Bingham, Dana & Gould?</p> <p>17 A. That was my understanding of what was</p> <p>18 said, yes.</p> <p>19 Let me correct the word "replace."</p> <p>20 Because it's bankruptcy court, Bingham Dana would</p> <p>21 not agree to be counsel. They weren't counsel in</p> <p>22 the bankruptcy, they weren't approved in the</p> <p>23 bankruptcy because they did not submit an</p> <p>24 application.</p>

11 (Pages 38 to 41)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 42</p> <p>1 Q. Do you remember when this conversation 2 took place? 3 A. I believe in the spring of 2000. 4 Q. Okay. 5 A. And my, I just want to make sure I answer 6 the question. 7 Q. I want to make sure -- yes. My question 8 was what causes you to believe that there was an 9 attorney/client relationship between EBG and MMT. 10 And I guess let me just, in spring of 2000 was MMT 11 retaining counsel? 12 A. No. At that time that's when I found a 13 number of documents in Mr. Cohn's files, including 14 what we've called the McConchie letter. 15 Q. I just want to take a step back. When you 16 said this was in the spring of 2000 that there was a 17 question whether or not Epstein, Becker & Green was 18 going to replace Bingham, Dana & Gould -- 19 A. No, I'm sorry. During the spring of 20 2000 -- 21 Q. Yes. 22 A. -- I went through certain records, 23 additional records at Cohn & Kelakos and I found 24 records that I had never seen before. This was</p>	<p style="text-align: right;">Page 44</p> <p>1 to employ? 2 A. That they intended to employ Epstein 3 Becker in the case. 4 Q. They had intended to employ them? 5 A. They had intended to, that's correct. 6 Q. And that they had intended to employ 7 Epsetin, Becker & Green as counsel to the debtor in 8 possession? 9 A. Again, didn't get into specifics. It was 10 special counsel and that was it. It was not, at 11 that time there was not anything that was of concern 12 to me. I asked that question more of curiosity than 13 anything else. 14 Q. Do you know whether it was to represent 15 employees of the debtor in possession? 16 A. I don't remember. 17 Q. Or the debtor in possession itself? 18 A. I don't remember. All I know, again, 19 special counsel to the debtor is what I remember. 20 Q. Did you take a copy of that document? 21 A. I did. 22 Q. And was that one of the documents that was 23 produced this morning? 24 A. I would not know.</p>
<p style="text-align: right;">Page 43</p> <p>1 among them. And I asked Mr. Cohn a question. It 2 was not the focus of what I was there to look at. 3 It just was in the documents that Mr. Cohn -- 4 basically drafts of documents. And I saw that and I 5 asked him that along with a hundred other questions 6 on other matters. 7 Q. Okay. So in the spring of 2000 you're 8 talking to Dan Cohn about a draft application to 9 employ that was dated when? 10 A. I don't know. 11 Q. Was it dated from the, before or after the 12 bankruptcy? 13 A. My belief in when this was all being done 14 was at the beginning of the case, so it would have 15 been December of '98 -- '97 or January, '98. That's 16 the time frame that I remember as the vintage of 17 when it was from. 18 Q. During the debtor-in-possession period of 19 the bankruptcy? 20 A. Because in 2000 Dan Cohn had no powers in 21 this case. Obviously it wouldn't have been 22 applicable. 23 Q. And what was it that Mr. Cohn said to you 24 in the spring of 2000 about this draft application</p>	<p style="text-align: right;">Page 45</p> <p>1 MS. BAGGER: I presume -- off the 2 record. 3 (Discussion off the record.) 4 (Recess 12:00-12:04 p.m.) 5 MS. BAGGER: Mark this as the next 6 numbered exhibit. 7 (Deposition Exhibit No. 5 8 marked for identification.) 9 Q. I'm putting in front of you a document 10 that's been marked as Exhibit 5 in this deposition. 11 (Document handed to witness.) 12 Q. Do you recognize that document? 13 A. I do. 14 Q. Is this the document that we were 15 discussing a moment before? 16 A. It was. 17 Q. This is a document that you took a copy of 18 from the files of Cohn & Kelakos during the spring 19 of 2000? 20 A. Again, from files of Cohn & Kelakos. I 21 said I believe it's the spring of 2000. It's my 22 memory. It could be corrected. 23 Q. Is this a document that you rely upon for 24 the conclusion that there was an attorney/client</p>

12 (Pages 42 to 45)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 46</p> <p>1 relationship between Epstein, Becker & Green and 2 Molten Metal Technology? 3 A. No. 4 Q. Was this the document that you were 5 referring to when you were listing for me the 6 reasons why you thought there was an attorney/client 7 relationship between -- 8 A. Yes, it was. 9 Q. But this document itself doesn't lead you 10 to this conclusion? 11 A. No. 12 Q. Was it, rather, your conversation with Dan 13 Cohn that led you to the conclusion? 14 A. It was that and the fact that afterwards, 15 to have seen this and then to have seen that the 16 debtor then ended up, nonetheless, paying Epstein, 17 Becker & Green post petition to do exactly what I 18 presume it was intended to do in connection with 19 this application. 20 Q. I'm sorry, I'm afraid you're going to have 21 to understand, how do those two factors together, 22 what is their significance to you? 23 A. The significance is that Epstein, Becker & 24 Green nonetheless represented the debtor or various</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Let me ask the question. When you say 2 "the applicant," you mean the law firm? 3 A. The law firm. 4 Q. And what financial disclosures is the 5 applicant law firm -- 6 A. Not just financial -- I'm sorry. 7 Q. Your previous answer was financial 8 disclosures. What financial disclosures is the law 9 firm applicant required to make? 10 A. Financial disclosures would be in terms 11 of, one, what you're owed, two, the past history of 12 payments that you received, from what sources. 13 Q. Okay. 14 A. And other relevant disclosures if there 15 are such that are non financial. In other words, 16 your connections with the debtor, its officers, its 17 employees, as specified in the bankruptcy rules and 18 local rules and the First Circuit decisions. 19 Q. Okay. And if a law firm does not -- 20 strike that. 21 If a law firm representing the 22 debtor does not get itself employed with the 23 imprimatur of the bankruptcy court, what result 24 follows from that?</p>
<p style="text-align: right;">Page 47</p> <p>1 individuals and was paid by the debtor. In fact, I 2 believe there was another letter I saw from Carole 3 Schwartz Rendon to Gene Berman demanding payment 4 post petition during the bankruptcy when they hadn't 5 been retained and she was demanding money from the 6 debtor and the debtor was in fact paying that money. 7 Q. When you give that answer, is there 8 something about this case, this matter arising in 9 the context of a bankruptcy that is significant? 10 A. Yes. 11 Q. Could you explain? 12 A. In order to get paid in a bankruptcy case 13 you have to be specifically retained. 14 MR. SUTTON: Employed. 15 A. Employed, I stand corrected. 16 MR. SUTTON: By whom? Explain. 17 A. You have to be employed, authorized to be 18 employed, one, by the debtor or Trustee or 19 committee, and that retention has to be approved by 20 the bankruptcy court. And in doing that, and in 21 doing that you're required to make very definitive 22 financial disclosures. 23 Q. "You," meaning the law firm? 24 A. The applicant is supposed to make --</p>	<p style="text-align: right;">Page 49</p> <p>1 A. If it doesn't get employed? 2 Q. Right. 3 A. One, to the extent it received any fees, 4 that would be subject to disgorgement or recovery 5 under Section 549 of the Bankruptcy Code. 6 Q. A law firm that represents employees of a 7 debtor in possession who are entitled to 8 indemnification by the company I presume would, or 9 do I understand you telling me should also file an 10 application for employment? 11 A. A law firm that would represent the 12 employees for which the debtor has any obligation to 13 pay or subrogation in my view would have to seek 14 employment to the bankruptcy court. 15 Q. And if it does not do so, what result 16 follows if it does not do so? 17 MR. SUTTON: I think we're getting a 18 little far afield here. He's not being deposed as 19 an expert. He's being deposed as a fact witness. 20 I've let you go on a little bit, but he's not here 21 to answer questions about the Bankruptcy Act and 22 hypotheticals. If you want to customize the 23 question as to this case, that's fine. 24 MS. BAGGER: Okay. Fair enough.</p>

13 (Pages 46 to 49)

ALAN L. BRAUNSTEIN

4-10-06

Page 50

1 Q. I believe you testified a moment ago that
2 it was not, in fact, the memo that's been marked as
3 Exhibit 5 that caused you to believe that there was
4 an attorney/client relationship between Epstein,
5 Becker & Green and Molten Metal Technology, but,
6 rather, an oral conversation that you had with Mr.
7 Cohn, is that correct?

8 A. There were -- again, that was one of the
9 indicia, not that per say, obviously, but --

10 Q. But the conversation you had with Mr. Cohn
11 was a factor in your conclusion that there was an
12 attorney/client relationship --

13 A. It was one of the factors --

14 Q. -- there was an attorney/client
15 relationship between Epstein Becker and Molten
16 Metal, correct?

17 A. That's correct.

18 Q. And you told me that Mr. Cohn told you
19 that Epstein, Becker & Green had continued billing
20 the debtor in possession without filing an
21 application to employ, correct?

22 A. No, I didn't tell you that Mr. Cohn told
23 me that.

24 Q. Okay. What did Mr. Cohn tell you, since

Page 52

1 party.

2 Q. And what's your, how do you know that?

3 A. Because Bingham, the docket and Bingham
4 for a fact did not. The docket would reflect who
5 was employed and Bingham was not employed. I did
6 check the docket specifically at the beginning of
7 the case as to who had been employed by each of the
8 professionals during the debtor-in-possession
9 period.

10 Q. So your review of the docket is what you
11 rely upon?

12 A. Yes.

13 Q. Okay. Did Mr. Cohn tell you what he
14 intended to employ Epstein Becker to do?

15 A. No.

16 Q. Do you know, other than your review of
17 bills rendered, do you have any information about
18 any work that Epstein Becker did during the
19 debtor-in-possession period?

20 A. The bills would speak for itself during
21 that period.

22 Q. And did you examine the bills to see what
23 Epstein Becker did?

24 A. I did.

Page 51

1 Mr. Cohn -- take a step back. Was there anything
2 that Mr. Cohn told you during this conversation in
3 which you saw Exhibit 5 that led you to believe that
4 there was an attorney/client relationship between --
5 that was a factor in causing you to believe that
6 there was an attorney/client relationship between
7 Epstein, Becker & Green and Molten Metal Technology?

8 A. Only a factor.

9 Q. What was it that he said?

10 A. That he intended to employ Epstein Becker
11 because Bingham was not going to be special counsel,
12 and that Epstein would not agree to that application
13 you see there if it had to waive its claim.

14 Q. Do you know what work Bingham was doing
15 for Molten Metal Technology during the
16 debtor-in-possession period?

17 A. No, Bingham did not represent the debtor
18 during the debtor-in-possession period.

19 Q. And that's --

20 A. This is prior to --

21 Q. And that's your understanding from Mr.
22 Cohn?

23 A. That's, again, Bingham was not employed,
24 retained or otherwise in the bankruptcy case by any

Page 53

1 Q. And what did your review of the bills tell
2 you Epstein Becker did?

3 A. That Epstein Becker was communicating with
4 certain employees of the debtor and the debtor
5 regarding various matters that were purported to be
6 in connection with various investigations.

7 Q. And do you have any information about
8 whose interests Epstein, Becker & Green was
9 representing in those investigations?

10 A. I believe the debtor's interests.

11 Q. And upon what do you base that conclusion?

12 A. Because at that point in time my
13 understanding from review of other records in the
14 case that the investigation at that time was
15 focusing in on what we call the invoice issue and
16 the Q2 and Q3 1996 misstated earnings, and that at
17 least one of the key employees who in files we found
18 stated that she had the smoking gun regarding the
19 invoice issue was one of the persons listed on the
20 time records.

21 Q. What's that person's name?

22 A. Rhonda Walker, and was the same person
23 who, if I remember correctly, was being currently
24 investigated by the Trustee with regard to the

14 (Pages 50 to 53)

ALAN L. BRAUNSTEIN

4-10-06

<p style="text-align: right;">Page 54</p> <p>1 information that she had -- when I mean currently, 2 at the time I made this conclusion and learned about 3 this. And I believe I had seen a document from 4 Rhonda Walker's attorney stating that as part of the 5 settlement agreement with Molten Metal in her, 6 quote, severance or leaving she was required to 7 retain Carole Schwartz Rendon and Epstein, Becker & 8 Green and, if I remember correctly, that lawyer's 9 letter raised an issue in connection with that 10 representation as being a conflict. 11 Q. Did you take a copy of that letter? 12 A. I don't know if I took a copy of that 13 letter. 14 Q. Where would that letter -- 15 MR. SUTTON: That letter is in the 16 documents. 17 MS. BAGGER: I think it might make 18 sense, we might just need to bring the whole ATG, 19 that whole folder that that document came out of. 20 We can go off the record. 21 (Discussion off the record.) 22 Q. Before we broke, Mr. Braunstein, I should 23 say during our break I noticed that you were taking 24 the opportunity to read Exhibit 5. Who does Exhibit</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Do you know who represented Molten Metal 2 Technology in the investigation as that term is -- 3 A. Again, I don't know. 4 Q. -- as that term is used in the memo? 5 A. Well, again, on the memo, presumably 6 Latham & Watkins, because Latham & Watkins is 7 mentioned in there. 8 Q. You said that Mr. Cohn discussed Epstein, 9 Becker & Green being retained as special counsel 10 because Bingham Dana was not going to be. I may 11 have asked this before and forgive me if I did, but 12 did Mr. Cohn indicate in what capacity he had 13 contemplated retaining Bingham Dana? 14 A. No. 15 Q. Was it in connection with the 16 investigation as that term is used in Exhibit 5? 17 A. Again, only the word "special counsel" was 18 used, both instances. 19 MS. BAGGER: Let's mark this as 20 Exhibit, I think it's 6. 21 (Deposition Exhibit No. 6 22 marked for identification.) 23 Q. I'm showing you a document that's been 24 marked as Exhibit 6 in this deposition, Mr.</p>
<p style="text-align: right;">Page 55</p> <p>1 5 say Epstein, Becker & Green is going to represent 2 if employed? 3 A. Certain employees to be obtained from 4 Carole -- well, actually, "employees" is defined, so 5 although it says "for authority to employ employees' 6 counsel in connection with government 7 investigation." So whatever -- again, the document 8 speaks for itself, but that's what it states. 9 Q. Who does the first sentence of the cover 10 memo say that Cohn & Kelakos is contemplating 11 representing Epstein, Becker & Green to represent? 12 A. "Enclosed is a draft of Epstein's 13 application to be employed on behalf of the MMT and 14 LP employees involved in the investigation." 15 Q. Do you have any knowledge of what the 16 investigation is? 17 A. What's being referred to here? 18 Q. Yes. 19 A. I don't know what specific investigation 20 it's referring to. 21 Q. Did Mr. Cohn tell you in your conversation 22 with him what investigation this document referred 23 to? 24 A. No.</p>	<p style="text-align: right;">Page 57</p> <p>1 Braunstein. 2 (Document handed to witness.) 3 Q. Do you recognize this document? 4 A. I don't have any specific recollection of 5 this document. 6 Q. Is this a document that you retrieved from 7 the Cohn & Kelakos files in 2000? 8 A. No. 9 Q. Have you ever seen this document before? 10 A. I am not sure if I have seen this document 11 before. 12 Q. Is this the document to which you were 13 referring in your prior answer when you talked about 14 a conflict of interest in connection with 15 representation of Rhonda Walker? 16 A. No. I wasn't referring to a particular 17 document. I said I believed that I had seen or 18 recollected that there was a document and it wasn't 19 a document or documents that related to that. 20 Q. When you say "related to that," can you 21 tell me precisely what you mean? 22 A. During the Rhonda Walker investigation by 23 this firm -- 24 Q. Which firm?</p>

15 (Pages 54 to 57)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 58</p> <p>1 A. By Riemer & Braunstein, there were a 2 number of documents that I had seen, as well as 3 other attorneys working on the matter, and therefore 4 that may have come up at one point in time. 5 Q. Okay. What had come up at one point in 6 time? 7 A. That at one point in time there may have 8 been in connection with Rhonda Walker or James 9 Andrews, as both received what we call preferential 10 payments, that may have come up. So I'm not 11 referring to -- I'll review this document right now. 12 Q. Yes, take a moment to read the document. 13 A. Again, I do not remember seeing this 14 document. 15 Q. Okay. In your previous answer you said 16 something about James Andrews and an investigation 17 of preferential payments. You didn't mean to 18 suggest that James Andrews had received a 19 preferential payment? 20 A. Yes. 21 Q. Did you mean to suggest that? 22 A. Yes. 23 Q. James Andrews was paid by Molten Metal 24 Technologies?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And I -- 2 A. That may have been where I drew the 3 inference, if you will. 4 Q. And I'm just asking you to describe to me 5 precisely what the conflict of interest that you may 6 have seen implicated in the documents was. 7 A. That Carole Schwartz Rendon of Epstein 8 Becker may not independently been able to represent 9 Rhonda Walker because of a potential conflict of 10 interest. 11 Q. And what was the conflict? 12 A. Carole Schwartz Rendon was representing 13 Molten or one of the other entities. Rhonda Walker 14 was a former M4 employee. And there were claims 15 with M4 against Molten. 16 Q. M4 was another affiliated debtor, correct? 17 A. Affiliated, yes, that's correct. 18 Q. Okay. And so was the conflict that she 19 was representing employees of M4 and employees of 20 Molten Metal? 21 A. My understanding is that she was 22 representing various employees of several of the 23 entities or employees who had interests in several 24 of the entities.</p>
<p style="text-align: right;">Page 59</p> <p>1 A. My understanding is that in connection 2 with the severance settlement with Rhonda Walker she 3 directed where the monies would be paid. So it may 4 not have been a preferential transfer, it may have 5 been a fraudulent conveyance to James Andrews. But 6 she received monies from Molten and allocated where 7 they would go. Molten made the payment. So, in 8 reviewing this again, I would say a fraudulent 9 conveyance is what we sued James Andrews for. 10 Q. But James Andrews would have received 11 money on behalf of Rhonda Walker -- 12 A. That's correct. 13 Q. -- as her attorney? 14 A. That's correct. 15 Q. You're not suggesting that payment was 16 made to the attorney for legal services? 17 A. No, definitely not. 18 Q. Okay. And what was the potential conflict 19 of interest that you may have seen in the documents? 20 A. Either may have seen or discussed with the 21 attorneys bringing these actions. 22 Q. "These actions" being? 23 A. Again, the fraudulent conveyance or any 24 other actions that involved Rhonda Walker.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. And why was that a conflict? 2 A. Why would that be a conflict? 3 Q. Yes. 4 A. Because the interests of the entities that 5 Ms. Rendon was trying to protect in my view, based 6 on my review of the records and the various 7 communications and the various documents in the 8 files where Ethan Jacks is directing the debtor to 9 pay her and the communications between her and Ethan 10 Jacks leading me to conclude that she had a host of 11 information regarding the true nature of these 12 investigations. 13 Q. Okay. 14 A. And to me in that mind, that poses some 15 sort of potential conflict. Again, I'm not making 16 any conclusion whatsoever. 17 Q. I guess I just want to take a step back. 18 You started your answer by saying, I asked you why 19 representing employees of M4 and employees of MMT at 20 the same time was a conflict. And you started your 21 answer by saying that the interests of the entities 22 Rendon was trying to protect were, and how would 23 that sentence be finished? 24 A. Were essentially the officers and</p>

16 (Pages 58 to 61)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 62</p> <p>1 directors of M4, MMT.</p> <p>2 Q. And so it was a conflict to be</p> <p>3 representing the employees when she was in fact</p> <p>4 seeking to protect the officers and directors, is</p> <p>5 that what you're saying?</p> <p>6 A. No. I'm saying, you're asking me what are</p> <p>7 the totality of all this add up to, what are the</p> <p>8 indicia. I'm giving you a number of what the</p> <p>9 indicia are. I'm not raising any --</p> <p>10 Q. I'm really not trying to grow this at this</p> <p>11 point. In fact, I'm trying to shrink it in to in</p> <p>12 the fall of 1997, winter of 1997, at the time at</p> <p>13 which Exhibits 5 and 6 were generated, did Carole</p> <p>14 Schwartz Rendon and Epstein, Becker & Green have a</p> <p>15 conflict of interest?</p> <p>16 MR. SUTTON: Well, that's not a fair</p> <p>17 question, because again, you're asking him for a</p> <p>18 legal conclusion. And you're going out of context.</p> <p>19 What he has said was in 2000 and 2001 when he became</p> <p>20 aware of this information and had more information</p> <p>21 regarding what he calls the mass conspiracy theory,</p> <p>22 then everything started fitting into place. Whether</p> <p>23 going back into 1997, which was in somebody else's</p> <p>24 mind --</p>	<p style="text-align: right;">Page 64</p> <p>1 A. No.</p> <p>2 Q. Okay.</p> <p>3 MR. SUTTON: Actually, that's not</p> <p>4 quite accurate. He said potential conflict.</p> <p>5 MS. BAGGER: Okay.</p> <p>6 Q. Was one of the -- I'm going to just go</p> <p>7 right back. I want you to tell me the reasons that</p> <p>8 you think that Epstein, Becker & Green represented</p> <p>9 Molten Metal Technology or had an attorney/client</p> <p>10 relationship with Molten Metal Technology.</p> <p>11 MR. SUTTON: That's been asked and</p> <p>12 answered.</p> <p>13 Q. Do you have anything to add to what you've</p> <p>14 told us previously? And if it helps you to recap in</p> <p>15 deciding whether you have anything to add, I think</p> <p>16 I'd like you to do that.</p> <p>17 A. Yes. Epstein Becker was in possession of,</p> <p>18 based on review of the bills, and in communication</p> <p>19 with all of the parties -- not to say all, a number</p> <p>20 of parties that were ultimately sued by the Trustee</p> <p>21 in bankruptcy for a number of improprieties. Prior</p> <p>22 to this time Molten's employees, the same officers</p> <p>23 and directors, were being sued in connection with a</p> <p>24 shareholder suit that was merely a tip of the</p>
<p style="text-align: right;">Page 63</p> <p>1 MS. BAGGER: Mr. Sutton, all</p> <p>2 deference, I'd rather question the witness. You've</p> <p>3 stated an objection on the record, but I don't think</p> <p>4 that anything else at this point is helpful.</p> <p>5 MR. SUTTON: Would you please get</p> <p>6 your hand out of my face?</p> <p>7 MS. BAGGER: My hand is five feet</p> <p>8 away from your face, Mr. Sutton.</p> <p>9 What was my last question that was</p> <p>10 objected to? I will seek to rephrase it.</p> <p>11 (The previous question was read</p> <p>12 back by the reporter.)</p> <p>13 Q. In your discussion -- let me take a step</p> <p>14 back.</p> <p>15 We've been discussing the bases for</p> <p>16 your suggestion that there was an attorney/client</p> <p>17 relationship between Epstein, Becker & Green and</p> <p>18 Molten Metal Technology, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And was I incorrect in hearing you say</p> <p>21 that one of the factors was learning that there was</p> <p>22 a conflict of interest that Carole Schwartz Rendon</p> <p>23 had in the last quarter of 1997, that this was one</p> <p>24 of the things?</p>	<p style="text-align: right;">Page 65</p> <p>1 iceberg. People like Ethan Jacks in particular, who</p> <p>2 the shareholders missed in their suit, but the</p> <p>3 Trustee didn't, received millions of dollars and</p> <p>4 additional payments from Molten such that if the Q2</p> <p>5 and 3 invoice issue came to light in the normal</p> <p>6 course, then Mr. Jacks especially and all of the</p> <p>7 others at that point in time faced great exposure.</p> <p>8 And it is my belief, and this has</p> <p>9 been espoused to the court, that the nondisclosure,</p> <p>10 which the court already has adjudicated in</p> <p>11 connection with the Latham & Watkins decision on</p> <p>12 disclosure, was tantamount to the reason why Molten</p> <p>13 became 20 million dollars insolvent in nine months</p> <p>14 of a bankruptcy proceeding.</p> <p>15 And the nature of the communications</p> <p>16 and the bills and the communications I'm talking</p> <p>17 about from Rendon to Jacks, to Berman and the</p> <p>18 responsive one saying we need to pay EBG,</p> <p>19 contributed to the excessive losses in the case.</p> <p>20 And that by representing Rhonda Walker, knowing and</p> <p>21 having familiarization with the peripheral</p> <p>22 documentation that does not relate in any way to</p> <p>23 what Rhonda Walker was going to testify to, and not</p> <p>24 even considering the fact that each of these Molten</p>

17 (Pages 62 to 65)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 66</p> <p>1 entities are five separate entities and may have 2 claims against one another, evidenced for me that 3 the scope of the employment went far beyond 4 representing mere employees at an investigation. 5 Q. Is that your, do you have anything to add 6 to that answer? 7 A. Yes, one other. And from the bills that I 8 have seen and from all of the other correspondence 9 that the representation of Christopher Nagel went 10 excessively beyond the scope of any investigation, 11 and yet the bills were being sent to Molten Metal 12 for payment of Christopher Nagel obligations. 13 Q. Anything else? 14 A. That's it. 15 Q. What work done for Christopher Nagel went 16 excessively beyond the scope of the investigation? 17 A. I believe there was a time entry that I 18 saw in one of the bills saying, meeting with or 19 conversation with Christopher Nagel regarding 20 McConchie. And to my knowledge, nothing in any 21 investigation, governmental investigation obviously 22 I'm referring to, involved or implicated McConchie. 23 Q. Do you recall what the time entry said was 24 done?</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Can you repeat the question? 2 Q. What about the time entry supports the 3 conclusion that Epstein, Becker & Green was 4 representing Molten Metal Technology, the debtor in 5 possession, and not Christopher Nagel, an 6 individual? 7 A. Nothing. 8 Q. So that particular, that particular 9 portion doesn't lead you to believe that there was 10 an attorney/client relationship between Epstein, 11 Becker & Green and Molten Metal Technology? 12 A. Yes, correct. 13 Q. What was the Q2/Q3 invoice issue? 14 A. In a nutshell, because I'm not the 15 forensic accountants in here, but essentially the 16 earnings for those two quarters, 1996, needed to be 17 restated. And I'll give you the, again, nutshell 18 layperson's statement that M4 or Molten Metal 19 Technology was booking revenues from M4 improperly 20 and/or illegally under PRDA regulations -- PRDA is 21 capital P-R-D-A, and I couldn't explain to you what 22 they are except they are under governmental 23 regulations. 24 Q. Are you aware of any facts that would</p>
<p style="text-align: right;">Page 67</p> <p>1 A. I don't. 2 Q. Would it matter to you what the time entry 3 said was done? 4 A. Again, would it matter to me in terms of 5 what? 6 Q. Would it affect the conclusion that you're 7 drawing? 8 A. It may, depending on the nature of what it 9 is. But I don't see -- again, because I'm drawing 10 it from a totality of eight years of investigation 11 in the case, that's how I see it, if you will. 12 Q. Do you recall how many time entries were 13 devoted to the McConchie letter? 14 A. Again, I don't know if it's -- you mention 15 McConchie letter. I said McConchie. 16 Q. I didn't mean to make a distinction. Do 17 you recall how many time entries were devoted to 18 McConchie? 19 A. I saw one at least. I'm not sure if there 20 are more than one, but I saw one. 21 Q. And what about that time entry or entries 22 causes you to conclude that it suggests that 23 Epstein, Becker & Green was representing Molten 24 Metal and not Christopher Nagel?</p>	<p style="text-align: right;">Page 69</p> <p>1 suggest that Carole Schwartz Rendon knew anything 2 about the Q2/Q3 invoice issue? 3 A. Based on the fact that she represented 4 Rhonda Walker who did know intimately about the 5 invoice issue and had been questioned several times 6 about that, I draw that inference. 7 Q. Was the Q2/Q3 invoice issue an issue in 8 the shareholder litigation? 9 A. To my knowledge, it was not specifically, 10 or even generally. I don't know. 11 Q. But as I understand it, it was the subject 12 of the Trustee's suit against the insiders? 13 A. Right. Not specifically in terms of that, 14 but it was one of the counts in there regarding the 15 actions against the officers and directors by the 16 Trustee. 17 Q. Other than the Q2/Q3 invoice information 18 which you infer Carole Rendon may have learned from 19 Rhonda Walker, what other information do you believe 20 -- let me -- what other information do you believe 21 that Carole Rendon may have acquired? 22 A. Again, I was saying not from, from her 23 representation of Rhonda Walker. There are 24 communications noted in the time records of her with</p>

18 (Pages 66 to 69)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 70</p> <p>1 other attorneys who specifically were involved or 2 knew about the M4 issue, M4 invoice issue. 3 Q. Let me follow up on that and then I'll 4 repose my question. 5 A. Okay, sure. 6 Q. Do you have any basis, do you have any 7 knowledge as to what the content of the 8 conversations in the bills between Carole Rendon and 9 those lawyers were? 10 A. No. 11 Q. Okay. Other than Carole Rendon's, the 12 allegation that Carole Rendon knew about the Q2/Q3 13 invoice issue, is there any other information that 14 you believe Carole Rendon had that suggests to you 15 that there was a broader scope to the 16 representation? 17 A. I think that with each of the various 18 employees, each one had, from here it looks like 19 they represented potentially 20 employees, so I 20 believe Jean Baulch also had information, and I 21 think that she was one of the Epstein Becker, but 22 they had a number of people and I don't know which 23 ones knew or not of the M4. I know Rhonda Walker 24 did.</p>	<p style="text-align: right;">Page 72</p> <p>1 that. 2 Q. Okay. Did the Trustee make available to 3 Mr. Hanfling a quantity of documents from, that 4 originated in the files of Bingham Dana? 5 A. To my knowledge, no, but that I would not 6 necessarily know or not know. I don't know where 7 certain things may have come from if they were 8 informally exchanged. 9 Q. Leaving aside documents with respect to 10 the escrow and the financial arrangements of the 11 settlement between Mr. Gray and Mr. Hanfling, were 12 documents, have documents before today been made 13 available to Mr. Hanfling to assist in the 14 prosecution of this litigation, the litigation in 15 which we're having this deposition today? 16 A. In connection with our settlement or what 17 -- there may have been documents that may have been 18 requested by -- again, when I say documents such as 19 proof of claims that Epstein may have filed, I don't 20 know and don't recollect exactly what was asked for 21 and what was given. 22 Q. Okay. In paragraph 10 of the settlement 23 agreement that we were looking at just a moment ago, 24 in addition to the waiver of -- I'm sorry, I'm not</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. And through, I guess the question is 2 through the representation of Rhonda Walker or any 3 of the other 20-some employees is there any other 4 information that you believe or that you have reason 5 to believe Carole Rendon gained that supports the 6 conclusion that you have drawn that the scope of her 7 representation was broader than just that of the 8 employees? 9 A. Again, just from the time records. That's 10 it. 11 Q. Has the Trustee made documents available 12 to Mr. Hanfling prior to today? 13 A. In connection with the settlement there 14 were documents that were exchanged. 15 Q. And what kind of documents were those? 16 A. I don't know specifically because they 17 dealt with the negotiation between the parties, that 18 ATG didn't have certain documents in its file that 19 we had showing, for example, the escrow agreements, 20 some of the sale closing documents, and also ATG 21 presumably had some of the documents that were 22 necessary in connection with an SEG litigation that 23 we were pursuing. So I don't know specifically what 24 was exchanged or not exchanged in connection with</p>	<p style="text-align: right;">Page 73</p> <p>1 looking at 10. I meant to look at 9. Number 9 2 recites that the parties agree to cooperate with 3 each other in connection with each party's ongoing 4 litigation and efforts to recover assets for the 5 bankruptcy estates from third parties and to 6 preserve records that may be relevant in that 7 regard. In furtherance of Mr. Gray's obligations 8 under that paragraph have documents before today 9 been transmitted from Mr. Gray's custody to Mr. 10 Hanfling? 11 A. I don't believe since this time period 12 that there have been any documents, but I'd stand 13 corrected by, if there were. But I don't believe 14 so. I know there were, again, documents while we 15 were going through the negotiations in connection 16 with that, but that I can't remember. 17 Q. Were any documents provided to Mr. 18 Hanfling to assist in the prosecution of this 19 litigation prior to the execution of this settlement 20 agreement? 21 A. There may have been like the proof of 22 claim or something that were public records that may 23 have been provided. Again, I would defer to Mr. 24 Hanfling. I just don't remember.</p>

19 (Pages 70 to 73)

ALAN L. BRAUNSTEIN

4-10-06

<p style="text-align: right;">Page 74</p> <p>1 MR. FLEISCHER: Documents were 2 provided prior to that agreement and I want to say 3 that was in 2003. Every document that we have 4 received copies have been provided to you along with 5 our discovery. There's nothing outside of those 6 documents that have been provided to you that have 7 been provided to that time period. 8 MS. BAGGER: Let me just follow up 9 with you with one question and then we'll get back. 10 The documents that were on the CD that were the PDF 11 files which were pretty obviously from Bingham Dana, 12 did those come from Mr. Gray? 13 MR. FLEISCHER: I don't recall 14 documents coming from Bingham and Dana. I'm not 15 sure what the source of that disk was. It might 16 have -- and I'm not sure of the timing of that one. 17 I didn't recall that documents came from Bingham and 18 Dana. 19 MS. BAGGER: We can pursue it off 20 the record. 21 MR. FLEISCHER: Okay. 22 MR. SUTTON: Well, I have a 23 question. You have documents purporting to be 24 records of Molten Metal Technology on a disk?</p>	<p style="text-align: right;">Page 76</p> <p>1 possession at this point? 2 A. If they were, they would have been, I 3 presume, given to you because we would have had 4 their file if they sent it to us. I don't believe 5 that we received any documents. We received copies 6 of pleadings, that I believe we received. 7 MS. BAGGER: Mark this as the next 8 and potentially last exhibit. 9 (Deposition Exhibit No. 7 10 marked for identification.) 11 Q. Put in front of you a document that was 12 marked as Exhibit 7 in this litigation. 13 (Document handed to witness.) 14 Q. Do you know if you've ever seen this 15 document before? 16 A. I've not seen this document. 17 Q. You'd agree with me that it appears to be 18 the, Mr. Hanfling's supplemental interrogatory 19 answers in this case? 20 A. Right. Document would speak for itself. 21 Q. Okay. I'd like to call your attention to 22 the supplemental answer to interrogatory number 1. 23 A. What page is that on? 24 Q. That starts at page 2.</p>
<p style="text-align: right;">Page 75</p> <p>1 MS. BAGGER: We can do this on, do 2 you want to do this on the record? 3 MR. SUTTON: Off the record. 4 MS. BAGGER: Off the record is fine. 5 (Discussion off the record.) 6 Q. Are you familiar with a litigation that 7 was commenced by Mr. Gray against ATG down in state 8 court in Tennessee? 9 A. I was. 10 Q. And that case was later removed to the 11 federal court in Tennessee? 12 A. Again, the documents speak for itself. We 13 employed special counsel to do that. 14 Q. Do you know whether documents were 15 produced by either party in that litigation? 16 A. I don't know. I did not handle it. We 17 employed special counsel, I believe Greenbaum Dole. 18 And though we had communications with them, I could 19 not remember what were or were not produced. But my 20 understanding is we didn't get too far in that 21 because ATG filed for bankruptcy. 22 Q. And the follow-up question was whether you 23 -- if there were any document productions or 24 depositions in that case, are they in your</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Okay. 2 Q. And I just want to ask you a couple of 3 questions about it, if you want to look over the 4 answer. 5 A. Just the supplemental answer itself? 6 Q. Yeah. 7 A. Okay. 8 (Discussion off the record.) 9 A. Okay. I may have to read it again to 10 answer a specific question, but I'm familiar. 11 Q. You've at least looked it over and 12 familiarized yourself with it? 13 A. I have. 14 Q. Had you read that answer before today? 15 A. No. 16 Q. Was the answer provided to you in draft 17 form before the interrogatories were submitted? 18 A. No. 19 Q. First sentence, if I can draw your 20 attention to the first sentence where it says," 21 Prior to the commencement of this action plaintiffs' 22 counsel were contacted by counsel for Stephen S. 23 Gray, specifically Alan L. Braunstein." I've 24 paraphrased a little bit, but is that a fair reading</p>

20 (Pages 74 to 77)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 78</p> <p>1 of the first two sentences?</p> <p>2 A. Except the matters alleged in the</p> <p>3 complaint, it was regarding the whole host of</p> <p>4 matters that did not involve and did not begin with</p> <p>5 matters alleged in the complaint.</p> <p>6 Q. What caused you to contact Mr. Hanfling's</p> <p>7 counsel?</p> <p>8 A. There were two matters. One, we had a</p> <p>9 proof of claim that was filed by ATG in the</p> <p>10 bankruptcy case arising from what ATG was alleged as</p> <p>11 a certain environmental derivative claim, if you</p> <p>12 will, that was being claims against Molten's estate.</p> <p>13 They filed a two million dollar administrative</p> <p>14 claim. And additionally, obviously, we filed the</p> <p>15 complaint there and everything was stayed by virtue</p> <p>16 of ATG's filing. Additionally, ATG had records that</p> <p>17 special counsel thought would be necessary in</p> <p>18 connection with -- when I mean special counsel for</p> <p>19 Stephen Gray, the Trustee, in connection with the</p> <p>20 SEG litigation.</p> <p>21 Q. Drawing your attention to the, I guess</p> <p>22 it's the middle of the paragraph, maybe the fourth,</p> <p>23 perhaps the fifth. "Mr. Braunstein informed</p> <p>24 plaintiffs' counsel about the McConchie letter</p>	<p style="text-align: right;">Page 80</p> <p>1 when we first mentioned Epstein, Becker & Green and</p> <p>2 that's when I think the light bulb went on with</p> <p>3 them, because we believed that Nagel's counsel had a</p> <p>4 copy of it and that's how it came out. But there</p> <p>5 was no -- the phone call was not made to induce them</p> <p>6 to bring litigation. We didn't know that they</p> <p>7 didn't know about McConchie and Epstein Becker.</p> <p>8 Q. But your recollection is that you told Mr.</p> <p>9 Hanfling that you believed that Epstein Becker had a</p> <p>10 copy of this letter?</p> <p>11 A. We believed, at that time we named all the</p> <p>12 people that we believed had a copy of that letter</p> <p>13 and we said Nagel and Nagel's counsel is Epstein</p> <p>14 Becker. I think that's how it went.</p> <p>15 Q. And what was your, what was the basis for</p> <p>16 believing that Epstein Becker had a copy of the</p> <p>17 letter?</p> <p>18 A. Three reasons. One, Christopher Nagel is</p> <p>19 one of the parties that's alleged to have induced</p> <p>20 McConchie into this. Two, during this time period</p> <p>21 of the settlement with regard to, during this time</p> <p>22 period of the negotiations I believe that Mike</p> <p>23 Dutore (phonetic) was representing Christopher Nagel</p> <p>24 and John Preston in the trustees litigation, and</p>
<p style="text-align: right;">Page 79</p> <p>1 referred to in the complaint and in prior discovery</p> <p>2 responses." What do you recall telling Mr.</p> <p>3 Hanfling's counsel about the McConchie letter?</p> <p>4 A. Well, during the stage of the negotiations</p> <p>5 and the discussions actually in connection with that</p> <p>6 the McConchie letter came up in context. I don't</p> <p>7 know in what context it came up. And during that</p> <p>8 time, at that point when it came up, if I remember</p> <p>9 correctly, Mr. Hanfling had no idea what this</p> <p>10 McConchie letter was or anything about that. And</p> <p>11 there were questions that were asked and so we</p> <p>12 provided responses to those questions. So really it</p> <p>13 really became a Molten Metal Trustee call that</p> <p>14 turned into what I believe formed the basis of the</p> <p>15 litigation. In other words, I did not call him</p> <p>16 saying you had a claim. This had to do with a long</p> <p>17 series of conversations with myself and special</p> <p>18 counsel on the phone with ATG.</p> <p>19 Q. Do you recall any of the questions that</p> <p>20 were asked by ATG about the McConchie letter?</p> <p>21 A. I believe certain questions like when,</p> <p>22 where, how and why, and who had copies of it. And I</p> <p>23 think what happened is that we, when we mentioned</p> <p>24 that we believed law firms had it, I believe that's</p>	<p style="text-align: right;">Page 81</p> <p>1 ultimately, and there was some coalescence, if you</p> <p>2 will, between the representation and their guidance</p> <p>3 of Preston and Nagel because Bingham had been</p> <p>4 representing all of the officers and directors and</p> <p>5 Molten and there was a conflict waived -- I mean</p> <p>6 conflict raised and I think Dutore came in and</p> <p>7 represented Nagel and Preston in the follow-up of</p> <p>8 that shareholder litigation.</p> <p>9 I don't know, I'm, again, with</p> <p>10 regard to that, this is why I mentioned that I</p> <p>11 thought Nagel's attorney would have it, because at</p> <p>12 that time period in the shareholder litigation we</p> <p>13 found out, unbeknownst to us and not disclosed to</p> <p>14 anyone, that the shareholder litigation, which made</p> <p>15 no reference to McConchie, was carving out \$350,000</p> <p>16 to pay Earl McConchie.</p> <p>17 That's what caused a lot of this to</p> <p>18 blow up. Why is McConchie getting money? Why is he</p> <p>19 getting it from the shareholder litigation? Why is</p> <p>20 he carving it out? That's when we found and thought</p> <p>21 there was something subversive in connection with</p> <p>22 the whole shareholder litigation process and the</p> <p>23 fact being why would you carve out that money? And</p> <p>24 it was really an end run around relief from the</p>

21 (Pages 78 to 81)

ALAN L. BRAUNSTEIN

4-10-06

Page 82

1 automatic stay to get him the money.

2 Q. Besides the fact that Nagel was the
3 recipient of the letter and that Epstein Becker came
4 in to represent Christopher Nagel in the shareholder
5 litigation after Bingham was conflicted out, was
6 there anything else that led you to believe that
7 Epstein Becker might have a problem because of a
8 conflict?

9 A. Because also remember, they had were
10 representing presently, I believe, Nagel in the
11 Trustee's litigation. Trustee had sued Nagel, among
12 others, at that time. And there were the bills that
13 showed an entry, at least one I remember, in the
14 same entry with the name Nagel and McConchie at
15 about the time period, I think within a month or so
16 of when the McConchie letter was, had been drafted
17 and was kept from everyone.

18 Q. When you say that the McConchie letter was
19 kept from everyone, can you explain what you mean?

20 A. The McConchie letter came to light
21 inadvertently, if you will, when I had been informed
22 by Cohn's office that there were certain records in
23 storage that had not been given to us at the
24 beginning of the case, that they were, quote,

Page 83

1 internal files. And at that time Molten's records
2 were all in -- either missing, gone, stolen or
3 whatever the case may be. The records were in a
4 state of incompleteness. So when I found out that
5 there were some additional records that I hadn't
6 seen, even though they were, quote, internal files,
7 and because Cohn had agreed to waive the
8 attorney/client privilege with respect to the lender
9 early on, I wanted to see what was there. And
10 that's when I found the McConchie letter and also
11 some other things such as the Epstein Becker. The
12 Epstein Becker really didn't mean much or anything
13 to me at that time. It was the McConchie letter
14 which suddenly was the, quote, smoking gun in our
15 proceedings.

16 Q. And so when you say that the McConchie
17 letter had been hid, are you suggesting it had been
18 hid by Molten Metal officers? Who did the hiding I
19 guess is what I'm asking?

20 A. Maybe it was the wrong word to say it was
21 hidden from us. I can't characterize what it was.
22 It was never disclosed, never provided to us. We
23 didn't know of its existence. And what was more
24 troubling is that McConchie filed a proof of claim

Page 84

1 in the case, but that letter wasn't attached. So
2 then to see that letter all of a sudden come out and
3 the allegations in the letter which all proved to be
4 true after the fact based on what our experts tell
5 us, obviously that was something that ultimately
6 resulted in all of the recoveries that we generated
7 in the case in order to take this out of
8 administrative insolvency.

9 Q. Did you retain a testifying expert in your
10 action against the insiders on the subject of the
11 McConchie allegations?

12 A. I didn't do that litigation.

13 Q. Did your firm --

14 A. Our firm did not do that litigation.

15 Q. Who did that litigation?

16 A. The firm of Greene & Hoffman.

17 Q. To your knowledge, did Greene & Hoffman
18 retain a testifying expert on the subject of the
19 McConchie allegations?

20 A. It didn't go to trial, so I don't know if
21 there was an expert that was, that they had
22 retained. I don't know. I don't believe there was
23 one because we would have retained him in the
24 bankruptcy court. We did not retain any expert for

Page 85

1 that purpose. But again, it was all settlement and
2 it was in a settlement posture from the very
3 beginning of the case.

4 Q. I want to ask you to turn to page 3 of
5 Exhibit 7 that's in front of you. And I want to ask
6 you about the paragraph that starts at the bottom of
7 the page and then goes over on to page 4.
8 Specifically I want to ask you about the first
9 sentence. "Gray's counsel further informed the
10 plaintiffs' counsel that shortly before ATG became
11 involved in negotiations with the individual
12 Defendants and Gray to purchase the Q-CEP assets the
13 individual Defendants had solicited several other
14 parties to purchase MMT assets including the Q-CEP
15 assets together with the individual Defendants."
16 What's the -- is that what you told Hanfling?

17 A. In my prior testimony?

18 Q. When you spoke to Mr. Hanfling did you
19 tell him that?

20 A. Honestly, I can't remember what I told him
21 or didn't tell him. But if he had asked and I had
22 answered, that probably would be, I would have told
23 him the same thing that I testified to earlier
24 regarding the purchase process and who I met with

22 (Pages 82 to 85)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 86</p> <p>1 and what I went through.</p> <p>2 MR. FLEISCHER: Counsel, just one</p> <p>3 point. There's a defined term in there. You should</p> <p>4 probably just establish with the witness if he</p> <p>5 understands that defined term. I don't believe he</p> <p>6 would necessarily know that unless he saw the prior</p> <p>7 response. This is a supplemental response.</p> <p>8 MS. BAGGER: I assume you mean</p> <p>9 "individual Defendants."</p> <p>10 MR. FLEISCHER: Yeah, I think you</p> <p>11 should put on the record whether or not he knows who</p> <p>12 we're talking about here.</p> <p>13 Q. I can represent to you that the individual</p> <p>14 Defendants are John Preston, Christopher Nagel,</p> <p>15 Eugene Berman and Ethan Jacks.</p> <p>16 A. Then it would only be John Preston and</p> <p>17 Christopher Nagel.</p> <p>18 Q. And who are the or who were the, I should</p> <p>19 say, several other parties?</p> <p>20 A. The ones I testified to earlier. It would</p> <p>21 have been, again, Clean Harbors and others, one or</p> <p>22 two others that I met with with Preston present and</p> <p>23 I believe Nagel, but definitely Preston. I don't</p> <p>24 remember the names. And I certainly did not give</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. And do you know whether you said that or</p> <p>2 not?</p> <p>3 A. Well, if he said I said it, then I</p> <p>4 presumably made that statement. I certainly drew</p> <p>5 that conclusion. And whether I had talked to the</p> <p>6 Trustee beforehand to get that information, to</p> <p>7 specify that, that's probably what I would have</p> <p>8 done.</p> <p>9 Q. The next sentence, "According to Gray's</p> <p>10 counsel, the individual Defendants could not</p> <p>11 conclude a transaction to acquire MMT assets without</p> <p>12 a third party." Is that what you told Mr. Hanfling?</p> <p>13 A. No. To be specific, Preston and Nagel at</p> <p>14 the meeting, and really Preston in a meeting with</p> <p>15 Stephen Gray, at least one of the meetings, there</p> <p>16 was a statement that Preston was trying to come up</p> <p>17 with the money from other parties. I also know that</p> <p>18 personally because we had sued Preston and Quantum,</p> <p>19 as well, and his responses during that time would be</p> <p>20 consistent with what was here.</p> <p>21 Q. I'm sorry, I don't understand the last</p> <p>22 part.</p> <p>23 A. In other words, we sued Quantum. We sued</p> <p>24 Preston. During that time period the financial</p>
<p style="text-align: right;">Page 87</p> <p>1 them the names because I didn't remember it then, as</p> <p>2 well.</p> <p>3 Q. I just want to read you the next two</p> <p>4 sentences. "However, the individual Defendants were</p> <p>5 not able to conclude an agreement with any of these</p> <p>6 parties. According to Gray's counsel, the</p> <p>7 individual Defendants then brought in ATG to</p> <p>8 co-purchase the MMT assets with the individual</p> <p>9 Defendants." Is that what you told Mr. Hanfling's</p> <p>10 counsel?</p> <p>11 A. That I do not remember. I may have made a</p> <p>12 presumption, but I don't remember.</p> <p>13 Q. Sitting here today do you have any</p> <p>14 information as to whether the individual Defendants</p> <p>15 brought in ATG to co-purchase the MMT assets?</p> <p>16 A. Not personal, not firsthand personal</p> <p>17 knowledge as to that.</p> <p>18 Q. Do you have any non-firsthand or hearsay</p> <p>19 knowledge about that?</p> <p>20 A. Hearsay knowledge only.</p> <p>21 Q. Can you tell me that?</p> <p>22 A. I believe that that information, if I had</p> <p>23 communicated that, would have been from someone at</p> <p>24 the Trustee's office, Stephen Gray's office.</p>	<p style="text-align: right;">Page 89</p> <p>1 wherewithal of both was discovered. And Preston,</p> <p>2 consistent with Preston back then, they needed</p> <p>3 investors. They did not have their own capital with</p> <p>4 which to purchase anything of consequence near what</p> <p>5 the Trustee was asking for.</p> <p>6 Q. To make sure I understand you, when you</p> <p>7 were later in litigation with John Preston --</p> <p>8 A. Correct.</p> <p>9 Q. -- you learned that back in 1988 he would</p> <p>10 not have had the financial wherewithal?</p> <p>11 A. Well, also because of the people that he</p> <p>12 was bringing to us it came out in the meetings, I</p> <p>13 don't know who said it, that he needed to find</p> <p>14 investors. He and Nagel believed in the technology,</p> <p>15 but needed to find investors in order to purchase at</p> <p>16 the price point that the Trustee was seeking.</p> <p>17 Q. Did Nagel and Preston tell you in these</p> <p>18 meetings that they believed in the technology?</p> <p>19 A. Again, the reason why I can't -- Nagel, I</p> <p>20 don't remember Nagel ever really speaking. I</p> <p>21 remember him being in various places. Preston was</p> <p>22 the one who would be talking.</p> <p>23 Q. Did Preston say that he believed in the</p> <p>24 technology?</p>

23 (Pages 86 to 89)

ALAN L. BRAUNSTEIN

4-10-06

<p style="text-align: right;">Page 90</p> <p>1 A. Yes.</p> <p>2 Q. The next sentence says, "Therefore, it was</p> <p>3 essential that the individual Defendants find a</p> <p>4 third party willing to co-purchase the MMT assets</p> <p>5 with the individual Defendants." Is that what you</p> <p>6 told Mr. Hanfling?</p> <p>7 A. No.</p> <p>8 Q. Is that true?</p> <p>9 A. I don't think it says the "Trustee's</p> <p>10 counsel." I don't know what their intent was or</p> <p>11 anything of that nature.</p> <p>12 Q. Okay. The next sentence says, "The</p> <p>13 transaction with ATG was concluded on an expedited</p> <p>14 basis." Did you tell Mr. Hanfling that or Mr.</p> <p>15 Hanfling's counsel, I should say?</p> <p>16 A. The court records would show that. I</p> <p>17 wouldn't have told them that. Filing was done on an</p> <p>18 expedited basis.</p> <p>19 Q. From your vantage point as Trustee's</p> <p>20 counsel, do you believe that the transaction</p> <p>21 occurred on an unusually rapid basis?</p> <p>22 A. I'm trying to determine whether it was</p> <p>23 induced by the court or not, if there were certain</p> <p>24 deadlines of things expiring. I would rely on what</p>	<p style="text-align: right;">Page 92</p> <p>1 cause to expedite the process. So I don't know</p> <p>2 which, from which end it was coming from in terms of</p> <p>3 why it was expedited.</p> <p>4 Q. And the last sentence, "The circumstances</p> <p>5 and timing of ATG's involvement reasonably infers</p> <p>6 that the individual Defendants had solicited ATG and</p> <p>7 not vice versa." Was that an inference that you</p> <p>8 drew and shared with Mr. Hanfling's counsel?</p> <p>9 A. I did not make that statement and --</p> <p>10 MR. FLEISCHER: I'll point out that</p> <p>11 that --</p> <p>12 MS. BAGGER: I would like --</p> <p>13 MR. FLEISCHER: It's not a quote.</p> <p>14 MS. BAGGER: I'm just asking him the</p> <p>15 question and I'd like him to be able to answer it.</p> <p>16 Q. Are you finished?</p> <p>17 A. I didn't make the statement. Is that the</p> <p>18 answer to the question or do you want me to -- what</p> <p>19 was the question? I'm sorry.</p> <p>20 MS. BAGGER: Why don't you read back</p> <p>21 the question and the answer? I just hadn't been</p> <p>22 sure if he was finished, so let's get the question</p> <p>23 and answer back and then we'll know.</p> <p>24 (The previous question was read</p>
<p style="text-align: right;">Page 91</p> <p>1 we said in our pleadings to the court, because that</p> <p>2 would be the freshest of recollections. I believe</p> <p>3 everything was filed on an expedited basis because I</p> <p>4 think the court imposed deadlines or the State</p> <p>5 imposed deadlines.</p> <p>6 Q. I guess the question, the question I'm</p> <p>7 meaning to ask you is based on your experience doing</p> <p>8 work of this kind, did the timetable on which the</p> <p>9 acquisition of these assets occurred strike you as</p> <p>10 noteworthy?</p> <p>11 A. No. Again, I've done hundreds if not</p> <p>12 thousands of these transactions and it varies. So</p> <p>13 again, the only timing constraints would have been</p> <p>14 put in the pleadings in terms of that and rely upon</p> <p>15 that. I just don't remember, honestly. I do</p> <p>16 remember having to stay up until 3:00 in the morning</p> <p>17 and then having to go another morning on this.</p> <p>18 There were certain deadlines that were imposed and I</p> <p>19 don't know which those were and whether it was also</p> <p>20 a constraint of the lenders or if it was the</p> <p>21 purchasers. I don't know who. I did know it was</p> <p>22 done on a very expedited basis, but well within the</p> <p>23 parameters of what the Bankruptcy Code provides and</p> <p>24 the local rules provide, which grants the court for</p>	<p style="text-align: right;">Page 93</p> <p>1 back by the reporter.)</p> <p>2 A. No, I did not share that with Mr.</p> <p>3 Hanfling's counsel.</p> <p>4 MS. BAGGER: Fine. I have no</p> <p>5 further questions.</p> <p>6 MR. FLEISCHER: I just want to be a</p> <p>7 couple minutes because you covered almost everything</p> <p>8 that I --</p> <p>9 THE WITNESS: Do I need any of</p> <p>10 these?</p> <p>11 MR. FLEISCHER: No.</p> <p>12 CROSS EXAMINATION</p> <p>13 BY MR. FLEISCHER:</p> <p>14 Q. Mr. Braunstein, the negotiations with ATG</p> <p>15 and the Quantum folks resulted in a letter agreement</p> <p>16 of November 13, 1998, do you recall that?</p> <p>17 A. I think in my testimony I said there was a</p> <p>18 November 6th and then I remember a November 13th.</p> <p>19 Q. Okay. Do you recall who was involved in</p> <p>20 the negotiation of that agreement on each side of</p> <p>21 the transaction?</p> <p>22 A. Again, with the parties present, as time</p> <p>23 grew closer, more and more people became involved.</p> <p>24 Because I would know them after having been</p>

24 (Pages 90 to 93)

O'CONNOR POLLARD REPORTING, INC.

Mycourtreporter@comcast.net

508-528-2950 * MA: 800-528-2951

Fax: 508-528-3927

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 94</p> <p>1 introduced to them earlier on in connection with 2 that. I don't know exactly when and who I met with 3 at each particular time frame. 4 Q. Do you recall who represented Quantum in 5 that negotiation? 6 A. Well, in the November 13th -- and what 7 happened, just so that you know, what happened, we 8 had met both with Quantum and NUKEM. After 9 November, I'm presuming November 6th was the first, 10 we had meetings after with each of the parties. And 11 we had a meeting with NUKEM at Stephen Gray's 12 office, then a meeting like at midnight at Mintz, 13 Levin in a big conference room with a number of 14 people. And again, all I know is I came to know who 15 the people were, some I knew, Ethan Jacks, Nagel, 16 Preston, those guys I knew. But I came, there were 17 more people that I would subsequently come to know 18 in connection with that. And I know throughout 19 there, at that meeting at Mintz, Levin there was a 20 more vocal responsiveness by other of the parties. 21 So there wasn't one person focusing on the 22 negotiations. The first time at our office it was 23 clearly Rick Mikels. He was virtually one voice at 24 that point. After that time period it was a whole</p>	<p style="text-align: right;">Page 96</p> <p>1 A. The transaction was at Epstein Becker with 2 a number of Epstein Becker lawyers. The only one I 3 remember was Jarvis Kellogg. 4 Q. And was Jarvis representing all of the 5 buyers or was it just certain portions of the -- 6 MS. BAGGER: Objection, foundation. 7 A. I can't, I certainly couldn't tell at that 8 point. Again, there were other people from my 9 office, two other people involved in the closing 10 from my office. I was there and brought over mainly 11 because there became a problem at the closing where 12 there wasn't enough money, how do we fix this. So 13 my intervention was coming in to figure out how to 14 do this. I was not, I think it was like a 13-hour 15 closing and I was there maybe for -- well, I was 16 there for quite some time in negotiating this 17 resolution. 18 Q. When did you first become aware, and I'm 19 asking this relative to the December 1, 1998 20 agreement to sell the assets to ATG and Quantum, 21 when did you first become aware that Epstein, Becker 22 & Green had been involved in representing MMT or MMT 23 individuals? 24 MS. BAGGER: Objection to the form</p>
<p style="text-align: right;">Page 95</p> <p>1 host of other people. 2 Q. Once Epstein Becker came in with Jarvis 3 Kellogg were you dealing with two sets of attorneys 4 on the other side of the transaction to get the deal 5 done? In other words, were you dealing with Epstein 6 Becker for ATG and another set of lawyers 7 representing the individual Defendants that we've 8 talked about before and Quantum? 9 A. My understanding, as I remember it, Rick 10 Mikels was doing the bankruptcy aspect of it and 11 then after that virtually it was just Jarvis 12 Kellogg, except when it came time afterwards to 13 allocate among the tech center assets. I think Rick 14 got back involved with that along with Jarvis. 15 Q. And then there was an agreement that was 16 entered in December 1, 1998. Do you recall that 17 agreement? 18 A. That's correct. That's the, I think that 19 was when the sale took place, the closing. 20 Q. Again, do you recall the attorneys who 21 represented the purchasers, all of the purchasers in 22 that transaction? 23 MS. BAGGER: Objection. Just 24 foundation.</p>	<p style="text-align: right;">Page 97</p> <p>1 of the question. 2 MR. FLEISCHER: I'm asking when he 3 became aware. 4 MS. BAGGER: I'm just objecting to 5 the form of the question. 6 A. It would have been, I believe it was 7 November of 1999. 8 Q. Subsequent to the transaction? 9 A. Right, yes. 10 Q. At the time of the transaction did anyone 11 from Epstein Becker approach you about a conflict 12 waiver from MMT or the Trustee to handle that 13 transaction? 14 A. No. And I was unaware that Epstein Becker 15 had any involvement. 16 Q. And exactly how was it that you came to 17 be, precisely how you became aware that Epstein 18 Becker had represented MMT employees or MMT? 19 MS. BAGGER: Objection to the form 20 of the question. 21 A. There were two things in particular that I 22 remember, because I was curious as to how much money 23 was being spent by MMT on lawyers. And they had two 24 charts. I remember these two charts very</p>

25 (Pages 94 to 97)

ALAN L. BRAUNSTEIN
4-10-06

<p style="text-align: right;">Page 98</p> <p>1 particularly. And one said, by Ethan Jacks, saying 2 hey, we're going to go into bankruptcy, we'd better 3 pay these people ahead of time and there were a 4 number of people on that list. And there was 5 another chart that I remember another firm had had 6 that I had seen. Again, I'm only, my photographic 7 memory shows me the one of Ethan Jacks or from Gene 8 Berman, and Epstein was on that. 9 But more significantly, the reason 10 why I found out was that Epstein Becker had received 11 monies post bankruptcy and we had done a, first 12 debtor had done its preference analysis, and we 13 looked on that and there was nothing that showed any 14 payments and I don't think the schedule showed any 15 payments. So I remember this particularly, because 16 we found out that the debtor had made unauthorized 17 post-petition payments. And it was validated a 18 number of years later with Bill Graham stating to 19 the court that, oh, yeah, they did and they did it 20 without our authority. 21 And so Epstein Becker had received 22 payments from the debtor post petition and we 23 brought an action on that 549. And at that point I 24 started reviewing bills. But it was only in</p>	<p style="text-align: right;">Page 100</p> <p>1 we've referred to before, did I understand that you 2 only found that document in one file? 3 A. That's correct. 4 Q. Which file was that again? 5 A. It was files that Cohn & Kelakos had not 6 given us at the beginning of the case or allowed us 7 to go through -- not allowed us to go through, 8 turned over to us at the beginning of the case. 9 When I mean turned over, we went over to his office 10 and looked at certain records and they sent us 11 certain records. 12 And what happened was I got a call, 13 again, I'm believing it was in the spring of 2000 14 from Michael Khoury or David Madoff who said, by the 15 way, there's other documents which we have in 16 storage, they're all internal documents, but since 17 the lender waived the attorney/client privilege, 18 we're telling you that they're here and if you want 19 to look at them. 20 Q. Do you recall which specific sub file it 21 may have been in? 22 A. No. I went to Cohn & Kelakos and they had 23 boxes. There were no sub files. It was just 24 documents. Most of it were draft pleadings. That</p>
<p style="text-align: right;">Page 99</p> <p>1 connection with the litigation with Epstein Becker. 2 Q. How was the 549 action resolved? 3 A. We settled that. 4 Q. Do you recall how much it settled for? 5 A. I think it was like probably 65 percent of 6 what the payments were. 7 Q. Do you have an understanding as to what 8 exposure MMT from a corporate perspective would have 9 faced in connection with the FBI/DOE investigation 10 that was occurring, I think, I believe it was in 11 1997-1998 time frame? 12 MS. BAGGER: Objection, foundation. 13 A. Exposure from a shareholder level, vast. 14 Exposure from a bankruptcy level, Trustee 15 immediately appointed. Which would have been before 16 the loan of 20 million was advanced and before they 17 incurred the 20 million dollars of administrative 18 debt. 19 Q. Did Jarvis Kellogg ever mention to you 20 that Epstein Becker was performing a conflict check 21 in connection with its involvement with this 22 transaction? 23 A. No, no. 24 Q. With respect to the McConchie letter that</p>	<p style="text-align: right;">Page 101</p> <p>1 was 90 percent of it. 2 Q. I just wanted to touch on a couple of 3 issues. Just pardon me for a moment. 4 I also wanted to clarify one other 5 area of your testimony. In response to Ms. Bagger's 6 questions before you had indicated that EBG was in 7 communications with certain employees of the debtor 8 and the debtor about certain investigations. Do you 9 recall that testimony? 10 A. Yeah. 11 Q. Okay. I'm curious to understand, you made 12 a distinction, you said certain employees of the 13 debtor and the debtor, and I wonder if you can 14 articulate the distinction between employees of the 15 debtor and the debtor. Was that, were those 16 different communications? 17 MS. BAGGER: Object to the form of 18 the question. 19 A. Yeah. It appeared that most of the time 20 entries from my perspective were all communications 21 with parties that were for the, either the debtor 22 directly or for these officers and directors. You'd 23 see counsel to Gene Berman, also Gene Berman, 24 counsel to Ethan Jacks, counsel to Bill Haney, who</p>

26 (Pages 98 to 101)

ALAN L. BRAUNSTEIN
4-10-06

Page 102

1 was a white collar attorney, counsel to Latham &
2 Watkins. So in other words, there's a, the time
3 entries show more of communications not with the
4 client, but mostly with the debtor or the other
5 parties that were protecting the officers and
6 directors, either individually or Latham & Watkins,
7 which was there to ostensibly protect the debtor,
8 but you can draw the inference from the judge's
9 decision.

10 MR. FLEISCHER: I think that's it
11 for me. I'm not going to go into anything further.

12 MS. BAGGER: I'm concluded, as well.
13 (Whereupon, the deposition in the
14 above-entitled matter was concluded
15 at 1:53 p.m.)
16
17
18
19
20
21
22
23
24

Page 103

1 COMMONWEALTH OF MASSACHUSETTS
2 COUNTY OF SUFFOLK
3
4

5 I, HEIDI B. STUTZ, Certified Shorthand
6 Reporter No. 146599S and Notary Public duly
7 commissioned and qualified in and for the
8 Commonwealth of Massachusetts, do hereby certify
9 that the witness whose testimony is hereinbefore set
10 forth, came before me on April 10, 2006, who was by
11 me duly sworn to testify to the truth and nothing
12 but the truth of his/her knowledge touching and
13 concerning the matters in controversy in this case;
14 that he/she was thereupon examined upon his/her
15 oath, and his/her examination reduced to typewriting
16 under my direction; and that the transcript is a
17 true record of the testimony given by the witness to
18 the best of my knowledge, skill and ability.

19 I further certify that I am neither
20 attorney nor counsel for, nor related to or employed
21 by any of the parties to the action in which this
22 deposition is taken; and further that I am not a
23 relative or employee of any attorney or counsel
24 employed by the parties hereto or financially
interested in the action.

IN WITNESS WHEREOF, I have hereunto set
my hand this 13th day of April, 2006.

HEIDI B. STUTZ

27 (Pages 102 to 103)

